

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-6120

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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ALBERT M. BILLITERI,

Plaintiff-Appellee,

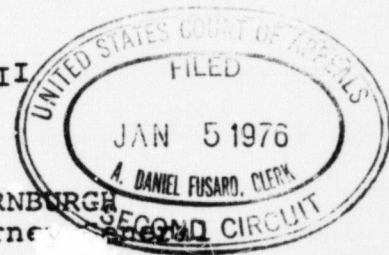
v.

UNITED STATES BOARD OF PAROLE and MEMBERS
OF THE UNITED STATES BOARD OF PAROLE,
Individually and in Their Official Capacity, and
UNITED STATES OF AMERICA,

Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of New York

JOINT APPENDIX PART II



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ALBERT M. BILLITERI,

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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3 * * * * *

4 ALBERT M. BILLITERI,

5 Plaintiff,

6 -v-

CIVIL ACTION
NO. 1974-365

7 UNITED STATES BOARD OF PAROLE and
8 MEMBERS OF THE UNITED STATES BOARD
9 OF PAROLE, Individually and in Their
Official Capacity and
UNITED STATES OF AMERICA,

10 Defendant.

11 * * * * *

12 ALBERT M. BILLITERI,

13 Petitioner,

14 -v-

CIVIL ACTION
NO. 1974-580

15 UNITED STATES BOARD OF PAROLE,

16 Respondent.

17 * * * * *

18 Proceedings held before the HON. JOHN T
19 CURTIN, United States District Judge, in Part I, United States
20 Court House, Buffalo, New York, on April 30, 1975.

21 APPEARANCES:

MARTOCHE, COLLESANO, ABRAMOWITZ & GELLER,
Attorneys for Plaintiff-Petitioner;
22 PHILIP B. ABRAMOWITZ, Esq., and HAROLD
J. BOREANAZ, Esq., of Counsel.

23 RICHARD J. ARCARA, United States Attorney,
24 Attorney for Defendant-Respondent; ROBERT
C. STEWART, Esq., DENNIS O'KEEFE, Esq.,
and RICHARD ENDLER, Esq., Attorneys,
25 United States Department of Justice, of
Counsel

INDEX OF WITNESSESDEFENDANT-RESPONDENT WITNESSESDR. CR. RDR. RCR.

Gregory Parness

6 23

Joseph Zito

27 38 44

Russell DeCicco

45

1 PROCEEDINGS: April 30, 1975, 9:30 a.m.
2 APPEARANCES: As before noted.
3 (Plaintiff-Petitioner not present.)
4
5 THE COURT: We are ready to begin.
6 MR. ABRAMOWITZ: No, your Honor. My client isn't
7 here.
8 THE COURT: I mean outside of that.
9 MR. ABRAMOWITZ: Yes.
10 THE COURT: You are ready, Mr. O'Keefe?
11 MR. O'KEEFE: Yes, your Honor.
12 THE COURT: Why don't we have Mr. Billiteri
13 brought down then, and is there anything
14 to do before we have live witnesses?
15 Do you have affidavits?
16 MR. O'KEEFE: Yes, your Honor. I just wanted to,
17 I thought that since this is in effect
18 supplanting the parole hearing of the
19 Board, I thought that - -
20 THE COURT: Let us not call it by that. I am
21 not sure that that is the right title
22 either.
23 MR. O'KEEFE: I thought perhaps we should have
24 some ground rules on the rules of evidence
25 and how to proceed.

1 THE COURT:

2 I think that certainly this is not
3 a criminal trial. The burden is differ-
4 ent and as far as the admissibility of
5 various items in evidence, they will be
6 much more relaxed than at a criminal
7 trial. There will be a lot of material
8 that probably we would permit in evidence
9 and then make rulings on later on. I
10 believe that I can consider and I ought
11 to consider hearsay, but as far as that
12 is concerned, if hearsay is too far out,
13 we are not going to. We are going to
14 consider not only the giver of the testi-
15 mony, but the circumstances under which
16 it was given and other ground rules to
17 determine reliability, but I am not going
18 to spend a lot of time today on hashing
19 over whether something is hearsay or not.
20 If it is an affidavit, we will take it
21 in and then we will consider written
22 arguments about it later.

23 MR. O'KEEFE:

24 Your Honor, I wanted to say one
25 more thing if I could. Some of these
witnesses have appeared and have appeared
at great length before this Court and

1 one of the witnesses today will be
2 Russell DeCicco who appeared last week
3 in the Tascarella case and I believe Mr.
4 Boreanaz cross examined him for like a
5 day and a half.

6 THE COURT:

On that score, of course, reference
7 can be made to prior cross examinations
8 in other cases or briefly, may be spelled
9 out so the Court may determine whether or
10 not the witness should be considered
11 worthy of belief, but we are not going
12 to spend, - we will take up each
13 witness as he comes.

14
15 (Plaintiff-Petitioner enters the
16 courtroom.)

17
18 THE COURT:

We will make rulings on cross
19 examination at that time.

20 MR. O'KEEFE:

All right.

21 THE COURT:

But I think on that score, that
22 I am entitled and I ought to consider
23 not only the live testimony here in
24 Court, but also other proceedings in
25 other cases.

1 MR. O'KEEFE:

Yes, your Honor.

2 THE COURT:

If Mr. Boreanaz or Mr. Abramowitz
3 want me to consider testimony given in
4 other trials, well, it will be made
5 part of the record here.

6 MR. O'KEEFE:

We have no objection to that, your
7 Honor.

8 THE COURT:

All right, Mr. O'Keefe.

9 MR. O'KEEFE:

Gregory Parness.

10
11 GREGORY PARNES S, a witness called by and in
12 behalf of the Defendant-Respondent, having been first duly
13 sworn, was examined and testified as follows:

14
15 DIRECT EXAMINATION BY MR. O'KEEFE:

16 Q Mr. Parness, do you know the petitioner in this particular
17 matter, Albert M. Billiteri?

18 A Yes, sir.

19 Q Would you point him out, please?

20 A The middle man over there at defense table.

21 Q Let the record reflect that Mr. Parness has identified
22 the petitioner, Mr. Billiteri. Can you tell us when
23 you first met Mr. Billiteri?

24 A Late 1967, early '68.

25 Q And what was the occasion for your meeting Mr. Billiteri?

1 A We, - myself and a couple other people had went to him
2 with some stolen property.

3 Q Could you speak up, please?

4 THE COURT: Mr. Parness, you have to talk up
5 a little bit.

6 THE WITNESS: Okay. Myself and two other people
7 had went to him with some stolen property.

8
9 BY MR. O'KEEFE:

10 Q And what kind of property was that, sir?

11 A I think the first time was, - I think, - with the results
12 of a burglary.

13 MR. ABRAMOWITZ: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: Of the Seymour-Knox home and was
16 about, - well, it was all gold jewelry.
17 I don't remember exactly what the weight
18 of it was, but a considerable amount of
19 gold.

20
21 BY MR. O'KEEFE:

22 Q Okay, so out of the burglary in which you participated.

23 A Yes.

24 Q There were certain gold objects which you sold to Mr.
25 Billiteri?

1 A That's correct.

2 Q And was Mr. Billiteri aware that these objects were, in
3 fact, stolen?

4 A Yes. In fact, they were even marked - -

5 THE COURT: Wait a minute. We are going to
6 go along here, but I think it best, Mr.
7 O'Keefe, if we can, to have factual
8 testimony, rather than you testifying.
9 Let Parness testify.

10 MR. O'KEEFE: Yes.

11 THE COURT: You had a meeting and that was here
12 in the City of Buffalo?

13 THE WITNESS: Yes, it was.

14 THE COURT: Where and when, and give us as much
15 detail about it as you can.

16 THE WITNESS: All right. It took place on Ashland
17 Avenue, Mr. Billiteri's home, and we
18 sold him, - well, we actually settled
19 on a price for the gold of \$1,500 and
20 he paid us each, myself, D'Angelo and
21 Stanley Seneca \$300 and promised to pay
22 the balance at some future date.

23
24 BY MR. O'KEEFE:

25 Q And did he, in fact, pay you the balance?

1 A No, he never did.

2 THE COURT:

Wait a minute. Let us take one
3 thing at a time. What else was said at
4 the meeting. You said that he knew it
5 was stolen. Why did you come to that
6 conclusion?

7 THE WITNESS:

Well, it was in the papers for one
8 thing and I am sure that Mr. Billiteri-

9 MR. ABRAMOWITZ:

Objection.

10 THE WITNESS:

Well, I don't know that, but the
11 stuff was marked with the party's name,
12 Seymour Knox. Some of it had his
13 initials on it and we discussed it came
14 from his home.

15 MR. ABRAMOWITZ:

Objection, your Honor, to "we
16 discussed".

17 THE COURT:

Overruled. Anything else said then?

18 THE WITNESS:

Not that I can recall, specifically,

19

no.

20 THE COURT:

Go ahead, Mr. O'Keefe.

21

22 BY MR. O'KEEFE:

23 Q Now, did there come a time when you approached Mr.

24 Billiteri to sell any other goods to him?

25 A Well, it wasn't actually, - we were, - I was approached

1 by him. I was approached by him, is the way it actually
2 turned out. We had burglarized, myself, D'Angelo,
3 Seneca and myself had burglarized Sidney Gross Furs
4 and took the furs to New York City and when we arrived
5 back from New York, D'Angelo and Seneca came and picked
6 me up.

7 THE COURT:

Excuse me, Mr. Parness. I am
having difficult understanding you.
Move back from the mike a little bit
and speak up and take your time.
Speak a little slower. Don't mumble,
in other words.

12
13 THE WITNESS:

When we came back from New York,
Stanley Seneca and Frank D'Angelo came
to pick me up and told me that Babe
Billiteri or Mr. Billiteri and Sammy
Lagatutta wanted to see us at Mr.
Billiteri's home on Ashland Avenue.
We went over there and we were told by
Mr. Billiteri and Mr. Lagatutta that
they wanted a thousand dollars apiece
from each of us for failing to come to
them originally with the stolen furs
and then we stepped out of our jurisdic-
tion, more or less, by going to New York

1 City.

2 MR. ABRAMOWITZ:

3 Objection to "more or less". If
4 this is the conversation, that is one
5 thing, but apparently, he is not relating
6 the conversation.

7 THE COURT:

8 Mr. Abramowitz, I understand. Just
9 say you have an objection. I'm not going
10 to listen to speeches. You are going to
11 have a chance to argue this later on.
12 If you object, say "I object".

13 MR. ABRAMOWITZ:

14 Fine, your Honor.

15 THE COURT:

16 Overruled. You, Mr. Parness, stay
17 away from words like "more or less". If
18 you are not sure of something, do not
19 say it. Try to recall as well as you
20 can. Take your time and you tell us
21 here you went down to New York, you sold
22 the furs in New York, you returned and
23 then you had a meeting with Billiteri and
24 somebody else. Tell us who was there and
25 what was said?

THE WITNESS:

Okay. Mr. Billiteri, Mr. Samuel
Lagatutta, myself, Frank D'Angelo and
Stanley Seneca were present. The meeting
moved from the inside of Mr. Billiteri's

1 house to the inside of his garage after
2 we had refused to pay them a thousand
3 dollars apiece and at that point, we were
4 beat up by Mr. Billiteri and Mr.
5 Lagatutta until we agreed to pay them a
6 thousand dollars apiece. I sustained a
7 black eye, a cut nose. D'Angelo had a
8 severe cut over his eye that required
9 treatment and stitches at a hospital and
10 Seneca wasn't hurt as bad, but he was
11 hurt also and, - well, we went, myself
12 and D'Angelo and Seneca didn't have the
13 money on us, but we eventually went and
14 got it and brought it back to Mr.
15 Billiteri and Mr. Lagatutta.
16

17 BY MR. O'KEEFE:

18 Q Mr. Parness, did you ever have occasion to borrow any
19 money from Mr. Billiteri?

20 A Yes, at one point, I believe it was prior to this
21 incident.

22 THE COURT:

Can you remember, - just if you
23 can't remember the month, but generally,
24 what year it was?

25 THE WITNESS:

1968.

1 THE COURT:

Go ahead.

2 THE WITNESS:

We, - or I had occasion to borrow
3 \$200 from him because I had to make some
4 form of car payment or insurance payment
5 and I understand that I was to pay back
6 \$240 which I did at a later point.

7 MR. ABRAMOWITZ:

Objection, your Honor, in terms of
8 what he understood.

9 THE COURT:

Overruled.

10

11 BY MR. O'KEEFE:

12 Q Did you feel that if you didn't pay this money back
13 anything would have happened to you?

14 MR. ABRAMOWITZ:

Objection, your Honor.

15 THE COURT:

I will overrule it, but you, Mr.
16 Parness, explain why you based your
17 feelings, if you did have any feelings,
18 what the basis was.

19 THE WITNESS:

All right. Yes, I did have reason
20 to believe and the reasons were that I
21 had known for some time what happened to
22 people who had failed to make their
23 payments which was that they would get
24 beat up.

25 MR. ABRAMOWITZ:

Objection.

1 THE COURT:

What was your information on that
and where did it come from?

2
3 THE WITNESS:

It came from other people who had
had experiences with Mr. Billiteri.

4
5 THE COURT:

Can you give us some details on that,
please?

6
7 THE WITNESS:

No, I really can't.

8 THE COURT:

I will overrule your objection, Mr.
Abramowitz. You cannot recall the de-
tails?

9
10
11 THE WITNESS:

No, because it was just more or less
knowledge we acquired on the streets and
I don't really remember exactly how.

12
13
14 THE COURT:

All right.

15 MR. ABRAMOWITZ:

Objection, your Honor, to all of
that and ask it be stricken as a conclu-
sion and hearsay, with no basis in fact.

16
17
18 THE COURT:

Overruled.

19
20 BY MR. O'KEEFE:

21 Q Mr. Parness, did Mr. Billiteri ever tell you that he was
22 a member of a structured criminal syndicate of some
23 kind?

24 A No.

25 Q He never did?

1 A No.

2 Q Did you think that he was?

3 MR. ABRAMOWITZ: Objection, your Honor.

4 THE COURT: I will overrule it as long as we
5 have some reason for whatever the thoughts
6 were.

7 THE WITNESS: Yes, I did, in fact, think that he
8 was, in fact, - I was told by Russell
9 DeCicco that he was.

10 MR. ABRAMOWITZ: Objection, your Honor.

11 THE COURT: Russell DeCicco will be here. I
12 will sustain the objection to that.

13
14 BY MR. O'KEEFE:

15 Q Can you tell us, if you can recall, what was Mr.
16 Billiteri's reputation on the street?

17 MR. ABRAMOWITZ: Objection, your Honor.

18 THE COURT: His reputation, - I will overrule
19 it and we will listen to what the basis
20 of the conclusion is.

21 MR. ABRAMOWITZ: Your Honor, can I ask that the ques-
22 tion be made more specific, reputation
23 for what.

24 MR. O'KEEFE: His criminal reputation.

25 MR. ABRAMOWITZ: I object to that. That is a matter

1 of fact we can check out Mr. Billiteri's
2 criminal record.

3 THE COURT: I will listen to Mr. Parness. For
4 what span of time did you know Mr.
5 Billiteri, Mr. Parness?

6 THE WITNESS: For approximately three years, from
7 1967 to 1970.

8 THE COURT: You told us about two meetings, one
9 in 1967 and one about the Gross furs.
10 When was that meeting?

11 THE WITNESS: I think the Gross furs took place
12 in 1969.

13 THE COURT: Did you have any other meetings
14 with Mr. Billiteri?

15 THE WITNESS: Yes.

16 THE COURT: You had the meeting about the loan,
17 right?

18 THE WITNESS: Yes.

19 THE COURT: Did you have any other meetings
20 with him during this period of time?

21 THE WITNESS: Yes. I had occasion to see him
22 with stolen property and he offered us
23 certain - -

24 MR. ABRAMOWITZ: Objection.

25 THE COURT: Did you have other meetings with him

1 about stolen property?

2 THE WITNESS: Yes.

3 THE COURT: About when and what was the property?

4 THE WITNESS: Well, it was in that same time

5 span between '68 and '69.

6 THE COURT: All right. Can you recall what

7 some of the other property was?

8 THE WITNESS: I believe - -

9 THE COURT: Go ahead.

10 THE WITNESS: There was one, - well, I am not

11 certain.

12 THE COURT: Any television sets, other kind of

13 merchandise?

14 THE WITNESS: No, no television sets. There was

15 other stolen property, but it was not

16 bought by him.

17 THE COURT: Did you have some conversation, let

18 us get to the first step, about other

19 stolen property?

20 THE WITNESS: Yes, yes.

21 THE COURT: Can you remember what the property

22 was?

23 THE WITNESS: No, because it was - -

24 THE COURT: Do you remember where it came from?

25 THE WITNESS: No.

1 THE COURT:

What was said in the conversation
with him, as well as you can recall?

2
3 THE WITNESS:

Show him the property, tell him what
I wanted for it in terms of money and
he would either agree to buy it or not
agree. In most, - or in these other
cases, he wasn't willing to pay our
price.

4
5
6
7
8
9 THE COURT:

During this period of time, you were
engaged yourself in a number of burglar-
ies?

10
11
12 THE WITNESS:

That's correct.

13 THE COURT:

And you had occasion to discuss
with other burglars, individuals like
Mr. Billiteri and disposing of stolen
goods, is that true?

14
15
16
17 THE WITNESS:

Yes.

18 THE COURT:

Who were some of the other people
that you talked about, - talked to about
Mr. Billiteri?

19
20
21 THE WITNESS:

Well, there would be my other
partners in the burglaries which range
from Russell DeCicco to Frank D'Angelo,
Stanley Seneca. Let's see, who else.

22
23
24
25 THE COURT:

We are going to have DeCicco here?

1 MR. O'KEEFE: Yes, your Honor.

2 THE COURT: The others we will not have here?

3 MR. O'KEEFE: That's right.

4 THE COURT: Can you recall now any conversations

5 that you had with Seneca or some of the

6 others about other experiences they had?

7 THE WITNESS: No, not specifically. It has been

8 some time and there was a lot of burglar-

9 ies that took place in that time span,

10 a couple of hundred, maybe.

11 THE COURT: All right. To go back to the

12 original question, Mr. O'Keefe, I will

13 permit you to put the question.

14

15 BY MR. O'KEEFE:

16 Q Once again referring to Mr. Billiteri's criminal repu-

17 tation on the street - -

18 A Well, we generally understood that he was a member of

19 the Mafia and that - -

20 MR. ABRAMOWITZ: Standing objection, your Honor.

21 THE COURT: I will, for the present, overrule

22 it, Mr. Abramowitz, and listen to your

23 argument later.

24 THE WITNESS: And that he was a money lender and

25 also a purchaser of stolen property and

1 in some cases, was actually involved in
2 one crime with us.
3

4 BY MR. O'KEEFE:

5 Q And what crime was that?

6 A That was a bank burglary on Delaware Avenue.

7 Q And can you tell us the details of that particular
8 burglary?

9 A Mr. Billiteri had a saw, a particular type of saw
10 that we needed to burglarize this bank and we made
11 an arrangement that he gave us the saw we would give
12 him a share of the burglary. The burglary itself was
13 an aborted attempt and it never was carried off. We
14 broke in, but we never were able to open up the safe.

15 Q Do you remember, approximately, when that aborted
16 burglary would be?

17 A I believe it was in 1969.

18 Q Did you ever have occasion to burglarize a jewelry
19 store on Delaware Avenue?

20 A Yes. It was a jewelry store right over here on
21 Delaware above a silver store owned by Pitt Petri.

22 Q And what did you do with the articles you had stolen
23 in that particular burglary?

24 A We had, - I believe we offered them for sale to Mr.
25 Billiteri and he turned them down.

1 MR. ABRAMOWITZ:

Objection again, your Honor, to
2 "I believe".

3 THE WITNESS:

We offered them for sale to Mr.
4 Billiteri and he turned them down and at
5 a later point we had a ring made for
6 each of Mr. Billiteri and Mr. Lagatutta
7 from that burglary and gave it to them
8 as a gift.

9 MR. O'KEEFE:

I have no further questions, your
10 Honor.

11 THE COURT:

Before you made a statement here
12 that they had a reputation. Well, we
13 had some evidence on money lending. Why
14 did these individuals say that Mr.
15 Billiteri was a member of the Mafia and
16 what did that mean to you at the time?

17 THE WITNESS:

I don't really know why they said
18 it other than the fact that there was an
19 organization here in Buffalo and there
20 still is, to the best of my knowledge,
21 that existed at the time and, of course,
22 I wasn't a part of the organization. I
23 was only - -

24 THE COURT:

Mr. O'Keefe, so that there is no
25 surprise to you, it seems to me that

1 earlier, Mr. Parness said that he didn't
2 know that he was a member of any
3 organized criminal group. I think this
4 has to be, as Judge Zampano said in
5 his decision there has to be a reasonable
6 basis, in fact, for this conclusion.
7 To merely put a name on a man does not
8 mean anything. We could put that name
9 on you or anybody else. I think it has
10 to be derived or you have some evidence
11 here of activity which I think is the
12 important thing.

13 MR. O'KEEFE:

I think, your Honor, just his
14 testimony to the effect that when he
15 went to New York and failed to sell the
16 furs.

17 THE COURT:

That is the kind of evidence we
18 ought to have on activity and if he had
19 some reason to say that there should be
20 some name, then we would consider that,
21 but I believe I will sustain Mr.
22 Abramowitz's objection to testimony
23 about Mafia. All right. Cross
24 examination.
25

1 CROSS EXAMINATION BY MR. ABRAMOWITZ:

2 Q May we have a moment to confer, your Honor? Mr.
3 Parness, you made reference to a bank burglary which
4 you claim that Mr. Billiteri participated in, is that
5 correct?

6 A Yes.

7 Q Now, in fact, as a result of your testimony in front
8 of a Federal grand jury, Mr. Billiteri and several other
9 people, - in fact, Mr. Lagatutta who you have mentioned,
10 were indicted, isn't that correct?

11 A That's correct.

12 Q And isn't it a fact that in 1971 you testified as a
13 main witness in a trial?

14 THE COURT:

Let us get to the point, Mr.

15 Abramowitz. The case was tried. Mr.

16 Parness was a witness and Mr. Billiteri

17 was found, as I recall, not guilty.

18 MR. ABRAMOWITZ:

That's correct.

19 THE COURT:

Is that the point?

20 MR. ABRAMOWITZ:

Yes, your Honor.

21 THE COURT:

Let us make the point.

22 MR. ABRAMOWITZ:

I will save those kind of questions
23 for argument at the end.

24 THE COURT:

The whole record is here in the
25 court and if you want to refer to the

record at all, it may be referred to.

BY MR. ABRAMOWITZ:

Q Thank you, your Honor. Mr. Parness, you indicated that you knew Mr. Billiteri from 1967 to 1970, is that correct?

A Yes.

Q And in that time you felt free to offer him stolen goods, is that correct?

A Yes.

Q And at several of those times when you offered him the stolen goods, those stolen goods were rejected, is that correct?

A Yes.

Q And you claim that they were rejected because you would ask a price and he would claim that the price was too high?

A Yes, that's correct.

Q And during the course of those dealings, there was no threat of retribution, was there, if you didn't accept, if he didn't accept?

A No.

Q And aside from this one incident which you have mentioned and which you claim there was violence, in all the dealings you had with Mr. Billiteri you claim over the three year period there was, in fact, no violence, isn't that correct?

1 A That's correct.

2 Q When was the last time you were in the City of Buffalo
3 on the streets?

4 A What do you mean by "on the streets"?

5 Q When was the last time you were in the City of Buffalo
6 aside from being in Federal protective custody?

7 A I have been in the City of Buffalo many times under
8 State protective custody. February of this year, in
9 fact.

10 THE COURT: In other words - -

11

12 BY MR. ABRAMOWITZ:

13 Q My question is, when was the last time you were in the
14 City of Buffalo when you felt free and, in fact, were
15 free to go and come as you please without Federal
16 Marshals or State Police officials - -

17 THE COURT: Mr. Abramowitz, Mr. Parness has
18 talked about a time frame, generally,
19 1967 to 1970, so what is the purpose?
20 He is not testifying to anything after
21 1970.

22 MR. ABRAMOWITZ: Your Honor - -

23 THE COURT: Is the argument we are concerned
24 with what is Billiteri's connection now
25 or what is the purpose of the question?

1 MR. ABRAMOWITZ:

No, your Honor. Frankly, it is to
2 attack the credibility of the witness
3 who is willing to state that in his
4 opinion Mr. Billiteri is now part of
5 the Mafia when, in fact, he has not
6 been in the City of Buffalo, as I
7 understand it, for four years.

8 THE COURT:

I have stricken that part and I am
9 only going to consider his testimony for
the time span which he has testified to,
11 1967 to 1970. What happened after 1970
12 he cannot testify to and he has not
13 attempted to.

14 MR. ABRAMOWITZ:

Thank you, your Honor. If I may
15 have just a minute. No further questions,
16 your Honor.

17 THE COURT:

Anything else? Thank you, Mr.
18 Parness.

19 MR. O'KEEFE:

Joe Zito.

20 MR. ABRAMOWITZ:

Your Honor, may we have a confer-
21 ence at the bench, please?

22 THE COURT:

All right.

23
24 (Off the record conference had at
25 the bench between Court and counsel.)

1 J O S E P H T. Z I T O, a witness called by and in behalf
2 of the defendant-respondent, having been first duly sworn, was
3 examined and testified as follows:
4

5 DIRECT EXAMINATION BY MR. O'KEEFE:

6 Q Mr. Zito, do you know Mr. Billiteri?

7 A Yes, I do.

8 Q Could you point out Albert M. Billiteri for us?

9 A Sitting at the table with the glasses.

10 Q Let the record show that the witness has identified the
11 petitioner, Billiteri. Now, Mr. Zito, I would like to
12 briefly read to you your criminal conviction record and
13 if you would confirm that these, in fact, are your
14 convictions. In 1944 - -

15 MR. ABRAMOWITZ: Objection, your Honor.

16 THE COURT: Why don't you just put that in the
17 record if you want to.

18 MR. O'KEEFE: Shall I just read it into the record?

19 THE COURT: Do we have to have it now?

20 MR. O'KEEFE: Well, I want to be fair to the
21 petitioner.

22 THE COURT: He objects to your reading it. I
23 will consider it. You can make it an
24 exhibit and hand it up and we will
25 consider it as part of the record. 265

1 BY MR. O'KEEFE:

2 Q How long have you known Mr. Billiteri?

3 A About eight, ten years.

4 Q Eight or ten years?

5 A Yes.

6 Q And how did you come to know Mr. Billiteri?

7 A I used to come to Buffalo to stag parties and crap
8 games or something like that, I used to meet him.

9 Q Now, directing your attention to approximately the
10 end of 1967 or the end of 1968, did you have occasion
11 to speak to Mr. Billiteri about a business matter?

12 MR. ABRAMOWITZ: About a what, I am sorry?

13 THE COURT: A business man.

14 MR. O'KEEFE: A business matter.

15 THE COURT: A business matter, I am sorry.

16
17 BY MR. O'KEEFE:

18 Q You did?

19 A I did.

20 Q Will you tell us the facts of that?

21 A There was a guy here in Buffalo that owed some money
22 and the guy told me to go over and see him and so I
23 went over to see this guy that owed this guy some
24 money to tell him to pay up and he said he didn't have
25 the money or something to that effect and I told him,

1 I says, "Well, you are three or four months behind
2 in your vig". I said, "You got to come up with a
3 couple months", so he told me, he says, "Give me a
4 couple hours and I will get some money up", so I came
5 back a couple hours later and then he told me to come
6 in the back room and Babe was there with a couple other
7 guys and asked me what I was doing there and I told him
8 I was there to collect some money from the guy and he
9 told me I had no business being there and loaning money
10 to some of his customers, so we had a dispute about it
11 and we resolved it about a week later.

12 Q And how was it resolved?

13 A We had a meeting with some people in Buffalo and it was
14 decided that he would collect the money for us.

15 Q And Mr. Billiteri would collect the money for you?

16 A Yes.

17 Q You say you had a meeting in Buffalo. Who did you meet
18 with?

19 A A couple guys at a restaurant.

20 Q And who are those couple guys?

21 A I think Frenchy Moore was one and Joe Fino another.

22 Q Joe Fino and Mr. Frenchy Moore?

23 A Yes.

24 Q And did Mr. Billiteri at this time tell you why he
25 objected to you collecting money in Buffalo?

1 A This fellow loaned this money to the other guy, said
2 we had no business being in Buffalo loaning money,
3 that we were out of line being there.

4 Q In what sense were you out of line?

5 MR. ABRAMOWITZ: Objection, your Honor. I'm sorry.
6 I object on the ground he should
7 specifically state the conversation if
8 he can.

9 THE COURT: If you can, but why did you use
10 the phrase "out of line"? Well, over-
11 ruled.

12 THE WITNESS: I was working out of a different
13 area and I was in somebody else's area,
14 stepping on somebody else's toes.

15 MR. ABRAMOWITZ: I object to all of that as con-
16 clusary, your Honor.

17 THE COURT: Your home at that time was in
18 Batavia?

19 THE WITNESS: Yes.

20 THE COURT: Did you have a conversation with
21 Mr. Billiteri about that?

22 THE WITNESS: Yes, sir. He said I had no business
23 trying to collect any accounts in Buffalo.

24 THE COURT: Can you remember how much money was
25 involved, what was the amount?

1 THE WITNESS: About \$1,800.
2 BY MR. O'KEEFE:
3 Q What was the terms of that loan, do you know?
4 A Six for five, \$200 a month vig.
5 Q So that would be \$200 a month interest?
6 A Yes.
7 Q All right. At that time, Mr. Zito, were you a member
8 of a criminal syndicate?
9 A Yes, I was.
10 MR. ABRAMOWITZ: Objection, your Honor. I think he
11 can outline what he was a part of.
12 THE COURT: I will overrule it, but you explain,
13 Mr. Zito, why you gave that answer.
14 THE WITNESS: I worked for some people out of
15 New York in illegal activities.
16 MR. ABRAMOWITZ: I ask that all that be stricken,
17 your Honor.
18 THE COURT: Overruled.
19
20 BY MR. O'KEEFE:
21 Q And were these activities conducted as a business?
22 A Yes, they were.
23 Q These criminal activities?
24 MR. ABRAMOWITZ: Objection, your Honor.
25 THE COURT: Overruled.

1 BY MR. O'KEEFE:

2 Q Okay. Now, did there ever come a time when you found
3 that Mr. Billiteri was a member of a criminal syndicate?

4 A Yes.

5 MR. ABRAMOWITZ: Objection, your Honor.

6 THE COURT: Overruled and permit the answer.

7 THE WITNESS: Yes, prior to that meeting.

8
9 BY MR. O'KEEFE:

10 Q And can you tell us how you found out about that?

11 A I used to come to Buffalo a lot and I had some dealings
12 with another fellow in Buffalo here and I was in the
13 bookmaking business and I was doing lay-off business in
14 Buffalo and I was introduced to Babe and if I wanted to
15 move any action in his direction, I could.

16 THE COURT: Tell us what you mean by "move any
17 action in his direction". Can you
18 translate that for us?

19 THE WITNESS: If I had to lay off in his office,
20 you know, if I had too much on a horse,
21 I could lay off to his office.

22 THE COURT: To his office?

23 THE WITNESS: Babe Billiteri's office.

24 THE COURT: Did that ever occur?

25 THE WITNESS: No, it didn't, your Honor.

1 THE COURT:

Go ahead, Mr. O'Keefe.

2 MR. ABRAMOWITZ:

Excuse me, your Honor. I ask that
3 all that prior testimony be stricken in
4 like of the fact that nothing he heard
5 could occur, - did occur, and it is the
6 most blatant and the most rank hearsay,
7 your Honor.

8 THE COURT:

For the present, I will overrule
9 the objection.

10

11 BY MR. O'KEEFE:

12 Q Did anyone ever say to you that Mr. Billiteri is "one
13 of our friends"?

14 MR. ABRAMOWITZ:

Objection, your Honor. Your Honor,
15 I understand that this should be a broad
16 hearing - -

17 THE COURT:

I will sustain the objection to that.

18

19 BY MR. O'KEEFE:

20 Q Did you ever talk to Freddie Randazzio about Mr.
21 Billiteri?

22 MR. ABRAMOWITZ:

Objection, your Honor. The Govern-
23 ment has Mr. Randazzio under control.
24 If they wanted to bring him in, they
25 could. I object as blatant hearsay.

1 THE COURT:

Do you mean the fact that Mr.
Randazzio is serving a sentence?

3 MR. ABRAMOWITZ:

All I am saying, your Honor, if there
is a necessity for hearsay, I would
presume that this Court would indulge
in hearsay on an easier basis.

7 THE COURT:

I will overrule the objection and
consider the testimony and listen to
your objection.

10 THE WITNESS:

Repeat the question, please.

12 BY MR. O'KEEFE:

13 Q Did Freddie Randazzio ever speak to you about Babe
14 Billiteri?

15 A Yes, in Babe's presence.

16 Q And what did he tell you?

17 A If I wanted to lay off any action I could, he was with
18 Freddie and he was okay.

19 Q And what did you take that term "okay" to mean?

20 A That he was with Freddie - -

21 MR. ABRAMOWITZ:

Objection, your Honor.

22 THE COURT:

Overruled.

23 THE WITNESS:

That he was with Freddie and the
24 people in Buffalo.

25 MR. O'KEEFE:

Your Honor, I have no further

1

question.

2

THE COURT:

Mr. Zito, what time period are

3

we concerned with? How long a period

4

of time? You said you have known

5

Billiteri about eight years. That would

6

be about eight years from now, going

7

back eight years from now?

8

THE WITNESS:

1965, '66, '67, '68, '69 and '70.

9

THE COURT:

All right. At that time, your home

10

was in Batavia?

11

THE WITNESS:

Yes, it was.

12

THE COURT:

And we know from the trial we held

13

here last spring that your testimony

14

was that you, at that period of time,

15

were making a number of trips to New

16

York City, to Batavia, to Buffalo and

17

to Binghamton, is that true?

18

THE WITNESS:

Right.

19

THE COURT:

As I understand it, you would see

20

Mr. Billiteri when you came to Buffalo?

21

THE WITNESS:

Yes.

22

THE COURT:

Did you see him at any other place

23

except Buffalo?

24

THE WITNESS:

No.

25

THE COURT:

When you came to Buffalo, about how

1 often would you come to Buffalo,
2 generally?

3 THE WITNESS:

Oh, at least once a week. If there
4 was a stag party, I would be here some
5 nights for the stag.

6 THE COURT:

At these stag parties, there would
7 be, I suppose, some gambling activity?

8 THE WITNESS:

Yes.

9 THE COURT:

And discussion about horse betting;
10 would there be at any of those things?

11 THE WITNESS:

Very seldom.

12 THE COURT:

Very seldom. Would you see Mr.
13 Billiteri there?

14 THE WITNESS:

Yes. I would see him at stag
15 parties, almost all the guys from
16 Buffalo used to come.

17 THE COURT:

You have told us about the one
18 loan. Can you recall talking to him
19 about any other loans similar to the
20 one you describe here?

21 THE WITNESS:

No, sir.

22 THE COURT:

Were you familiar with any bur-
23 glaries in the Buffalo area at that time?

24 THE WITNESS:

Not that I can recall, your Honor.

25 THE COURT:

Do you remember, did you ever have

1 any conversations or were you present
2 where any conversations were carried on
3 with Mr. Billiteri about fencing any
4 burglarized goods or merchandise?

5 THE WITNESS:

Not that I can recall, your Honor.

6 THE COURT:

About how many people, roughly,
7 would be at these various meetings or
8 parties that you have told us about?

9 THE WITNESS:

Two hundred people.

10 THE COURT:

So that would you say at that time
11 that you talked to Mr. Billiteri fre-
12 quently, or only once in a while?

13 THE WITNESS:

Once in a while. It was a social
14 point, "How are you".

15 THE COURT:

All right. I see. Mr. Abramowitz.
16 One thing, Mr. Zito, at these various
17 stags, - you have talked about Mr.
18 Randazzio and he was convicted around
19 about that time on a Federal charge.
20 Were there any other people attended
21 these meetings who have been convicted
22 of either Federal or State charges? Can
23 you recall any names?

24 THE WITNESS:

I don't know their backgrounds, if
25 they have been arrested or convicted, your

1 Honor.

2 THE COURT: Of the others?

3 THE WITNESS: Yes.

4 THE COURT: Can you recall any that were

5 arrested? For example, Mr. Billiteri

6 was charged here in this particular

7 case on which we are having the hearing

8 about and he was also charged in another

9 case with Mr. Lagatutta. Do you remember

10 any other arrests of any of these other

11 individuals?

12 THE WITNESS: I think Joe Pino has been arrested.

13 THE COURT: Very well, Mr. Abramowitz.

14 MR. ABRAMOWITZ: May I have a minute, your Honor?

15 THE COURT: Mr. Boreanaz.

16

17 CROSS EXAMINATION BY MR. BOREANAZ:

18 Q Mr. Zito, what year was it that you claim you first

19 saw Mr. Billiteri?

20 A '65, '66, '67.

21 Q Well, which of the three was it?

22 A '65, '66.

23 Q Pardon?

24 A '65, '66.

25 Q All right. Can you be more specific as between '65

1 and '66 now?

2 A No, I can't.

3 Q All right, so you claim you first saw him in either, -
4 sometime in either 1965 or '66?

5 A Yes.

6 Q What year was it you claim you last saw him other than
7 here in court?

8 A 1970.

9 Q All right, so that - -

10 A '71.

11 Q So five or six years is the time period that we are
12 talking about.

13 A Yes.

14 Q Now, during that time period, is it your claim that
15 you were coming here to Buffalo like once a week to go
16 to stag parties?

17 A We used to come for other reasons too.

18 Q All right. Were you coming to Buffalo once a week
19 during a five-year period?

20 A Yes, at least once a week.

21 Q And is it your claim that there was a party every week?

22 A Not every week, no. I used to come to quite a few stags
23 but not every week.

24 Q And over the time period that you have described, you
25 saw Mr. Billiteri on numerous occasions, did you?

1 A I seen him pretty much.

2 Q All right. Would it be fair to say that you saw him
3 once a month?

4 A Maybe.

5 Q All right, so that you saw him a period of maybe sixty
6 or seventy times during this time period?

7 A Yes.

8 Q Now, specifically, did you ever lay off any bookmaking
9 action to him?

10 A No.

11 Q Did he ever lay any off to you?

12 A No.

13 Q You were known as a bookmaker, were you not?

14 A Yes.

15 Q You represented yourself to be associated with
16 organized crime or criminal activity, did you not?

17 A Yes.

18 Q And your claim is that there was talk about whether
19 you and Mr. Billiteri would engage in some bookmaking
20 activity, but that it never occurred?

21 A That's correct.

22 Q All right. Now, so far as the other incident is
23 concerned, that would be where you attempted to collect
24 some debt from a business man?

25 A Yes, that's correct.

1 Q And isn't it true that the complaint was that you had
2 attempted to use force or threatened force?

3 A That's correct.

4 Q And you were bawled out because of that?

5 A That's correct.

6 Q And Mr. Billiteri was involved in an effort to not
7 use force in the collection of this debt, isn't that
8 so?

9 A Not exactly, but - -

10 Q Well, that is the main thrust of what developed, isn't
11 it?

12 A That I had no business there.

13 Q That you had no business because you tried to use force
14 and you were told to leave?

15 A Because I had no business there.

16 Q All right, because you tried to use force, that's what
17 provoked - -

18 MR. STEWART: Your Honor, the witness didn't say
19 that at all.

20 THE COURT: Wait a minute. Mr. Stewart, there
21 is no jury here and I know what was said.
22 Mr. Boreanaz, I think the witness said
23 before that he was bawled out because
24 this was not his territory.

25 MR. BOREANAZ: I understand what he said, your

Honor.

THE COURT:

All right.

BY MR. BOREANAZ:

Q Part of that was that you had attempted to use force,
isn't that so?

A Well, I did attempt to use force, yes.

Q All right, and so far as Mr. Billiteri's contact with
it, you were told that forced him to go, isn't that
right?

A No. I was told to stay out of Buffalo.

Q Because you tried to use force, isn't that the fact?

A Because we were loaning money there.

THE COURT:

Well, Mr. Boreanaz - -

MR. BOREANAZ:

All right. I will pass the issue.

THE COURT:

The witness has one attitude and
you have another.

MR. BOREANAZ:

I will pass the issue, your Honor.

THE COURT:

All right.

BY MR. BOREANAZ:

Q You never did engage in any other activities so far as
collecting loans in Buffalo is concerned?

A That's correct.

Q And you know of no specific instance where Mr. Billiteri
did?

1 A No.

2 Q So that you tell us about one incident sometime in
3 1968, you say?

4 A Yes.

5 Q And you told us about some talk about engaging in book-
6 making activity?

7 A That's correct.

8 Q And that is the sole extent of what you had to say about
9 Mr. Billiteri?

10 A That's correct.

11 Q And during all this five year period of time, for sixty-
12 some odd meetings that you had with him, you - -

13 A I didn't have sixty meetings with him.

14 Q All right, sixty some times you had opportunities to
15 have meetings with him?

16 A Yes.

17 Q During all this period of time, you were representing
18 yourself to be associated with organized criminal
19 activities?

20 A I don't think I advertised it. I seen him at places,
21 "Hello, how are you". That's the extent of it. I
22 didn't go around saying "I belong to some organization"
23 or bothered representing myself or anything like that.

24 Q Well, you claim to have had some conversation with Mr.
25 Randazzio?

1 A Yes.

2 Q About Mr. Billiteri?

3 A Yes.

4 Q All right, and thereafter, you did no business with
5 Mr. Billiteri, is that correct?

6 A No. I stuck to the same office.

7 MR. BOREANAZ: That is all.

8 THE COURT: Anything else, Mr. O'Keefe?

9 MR. O'KEEFE: Just a second.

10
11 REDIRECT EXAMINATION BY MR. O'KEEFE

12 Q Mr. Zito, when you testified earlier on direct examina-
13 tion, I believe you said that Mr. Randazzio told you
14 that "Mr. Billiteri is with me" is that correct?

15 MR. ABRAMOWITZ: I am sorry, I didn't get that.

16 THE COURT: Mr. O'Keefe, we heard it before.

17 It is in the record, and you will be
18 able to refer to it in your argument.
19 It does not help, really. There is no
20 jury here.

21 MR. O'KEEFE: All right.

22 THE COURT: If it is said once, it is said.

23 MR. O'KEEFE: All right.

24 THE COURT: We do not have to have it twice.

25 All right. Anything else? Nothing

1 further. Thank you, Mr. Zito.

2 MR. O'KEEFE:

Mr. DeCicco.

3
4 * * * * *

5
6
7 R U S S E L L D E C I C C O, a witness called by and in
8 behalf of the defendant-respondent, having been first duly
9 sworn, was examined and testified as follows:

10
11 DIRECT EXAMINATION BY MR. O'KEEFE:

12 THE COURT:

Mr. O'Keefe.

13 BY MR. O'KEEFE:

14 Q Mr. DeCicco, do you know the petitioner Albert M.
15 Billiteri?

16 A Yes, I do.

17 Q Could you point him out for us, please?

18 A Sitting right there in the middle.

19 Q In the middle of the table. Let the record show that Mr.
20 DeCicco has identified Mr. Billiteri. How long have you
21 known Mr. Billiteri?

22 A Around 1970 or '71. I mean, -- I am sorry, 1960.

23 Q Since 1960 you have known him?

24 A Yes. I am sorry.

25 Q And how did you happen to meet him?

1 A I believe it was through his brother.

2 Q And that would be Matthew Billiteri?

3 A Matthew.

4 Q Okay. Now, Mr. DeCicco, did there come a time when
5 you joined a criminal group?

6 A Yes.

7 Q And can you tell us when that took place?

8 A Nineteen - -

9 MR. ABRAMOWITZ: Objection again, your Honor, on
10 the same grounds.

11 THE COURT: Overruled and we will listen to
12 Mr. DeCicco's description.

13 THE WITNESS: 1971.

14
15 BY MR. O'KEEFE:

16 Q And can you tell us how you came to join that criminal
17 group?

18 A I was sponsored by Mr. Randazzio, Freddie Randazzio.

19 Q You were sponsored by - -

20 THE COURT: What year is this, Mr. DeCicco?

21 THE WITNESS: '71.

22 THE COURT: 1971.

23
24 BY MR. O'KEEFE:

25 Q Okay, and you say you were sponsored by Mr. Randazzio,

1 right?

2 A Yes, sir.

3 Q And were you assigned - -

4 THE COURT: Let us get this straight. Are
5 you sure it was in 1971, four years ago?

6 THE WITNESS: Yes.

7 THE COURT: Sponsored by Mr. Randazzio?

8 THE WITNESS: Yes.

9 THE COURT: Fred Randazzio?

10 THE WITNESS: It was when I come out of Leavenworth.

11 THE COURT: He was in jail then?

12 THE WITNESS: Yes.

13 THE COURT: All right.

14

15 BY MR. O'KEEFE:

16 Q And were you assigned to work with anyone in this
17 particular criminal endeavor?

18 A Yes.

19 Q And who were you assigned to work with?

20 A Mr. Billiteri.

21 Q Were you to work under Mr. Billiteri?

22 A Yes.

23 Q And what was Mr. Billiteri's particular criminal endeavor
24 at that time?

25 A He was loan sharking and bookmaking.

1 Q And did Mr. Billiteri, in fact, pay you any money?

2 A Yes.

3 Q And approximately how much was he paying you?

4 A Something like a hundred a week.

5 Q And what were you doing for the hundred a week?

6 A Nothing.

7 Q You were doing nothing at that time?

8 A No.

9 Q Did you ever work inside of his bookmaking activity?

10 A No.

11 Q You never did?

12 A No.

13 Q Did you ever assist him in any of his loan sharking
14 activity?

15 A No.

16 Q Did you know who, in fact, did work in his bookmaking
17 activity?

18 MR. ABRAMOWITZ: Objection. That has got to be
19 hearsay again, your Honor.

20 THE COURT: It may or may not be. It depends
21 on how he got the knowledge. I will
22 consider it. Overruled.

23 THE WITNESS: There was quite a few people.

24 BY MR. O'KEEFE:

25 Q Were you ever at one of the places where they were

1 conducting this bookmaking activity?

2 A Yes.

3 Q And where was that located?

4 A It was on Fargo Street.

5 Q And who was there at that time conducting the bookmaking
6 activity?

7 A Mr. Caci.

8 Q Mr. Caci; what is his first name?

9 A Al Caci.

10 Q Was anyone else there conducting bookmaking?

11 A There was John Pelitere.

12 Q And was anyone else there conducting the bookmaking
13 activity?

14 A His son was there.

15 Q His son. What is his son's name?

16 A Albert, Jr.

17 Q Albert, Jr. Was Mr. Billiteri there himself?

18 A I don't believe I ever saw Mr. Billiteri there.

19 MR. ABRAMOWITZ: I didn't get that answer.

20 THE COURT: He said "I do not believe I ever
21 saw Mr. Billiteri there".

22 MR. ABRAMOWITZ: Thank you.

23
24 BY MR. O'KEEFE:

25 Q Well, how did you know that was Mr. Billiteri's operation?

- 1 MR. ABRAMOWITZ: Objection, your Honor.
- 2 THE COURT: Overruled.
- 3 THE WITNESS: Well, I knew from Mr. Caci.
- 4 MR. ABRAMOWITZ: I can't hear him.
- 5 THE COURT: Keep your voice up, please, Mr.
- 6 DeCicco.
- 7 THE WITNESS: I knew from Mr. Caci and also from
- 8 Mr. Billiteri.
- 9 MR. ABRAMOWITZ: I ask that that be stricken, your
- 10 Honor.
- 11 THE COURT: Overruled.
- 12
- 13 BY MR. O'KEEFE:
- 14 Q Mr. Billiteri had told you that was his operation?
- 15 A Yes.
- 16 Q Did he ever tell you approximately how much money he
- 17 was making there?
- 18 MR. ABRAMOWITZ: Objection, your Honor.
- 19 THE COURT: Overruled.
- 20 THE WITNESS: Approximately eight or nine thousand
- 21 thousand a week.
- 22
- 23 BY MR. O'KEEFE:
- 24 Q Eight or nine thousand a week. Is that gross?
- 25 A Yes.

1 MR. ABRAMOWITZ: Objection.

2 THE COURT: All right. I will strike that.

3 Do you know whether it was net or gross?

4 He said eight thousand a week?

5 THE WITNESS: Yes.

6 THE COURT: Mr. DeCicco, you said before that

7 you came out of Leavenworth. What was

8 your conviction?

9 THE WITNESS: Pardon me, your Honor?

10 THE COURT: What was your conviction for? You

11 say you were in Leavenworth?

12 THE WITNESS: Yes.

13 THE COURT: What was that for?

14 THE WITNESS: It was for conspiracy.

15 THE COURT: All right. Mr. O'Keefe - -

16 MR. O'KEEFE: Yes, your Honor.

17 THE COURT: You will hand up as an exhibit Mr.

18 DeCicco's record.

19 MR. O'KEEFE: Yes, your Honor. I have an arrest

20 record.

21 THE COURT: All right.

22

23 BY MR. O'KEEFE:

24 Q Did there come a time, to the best of your recollection,

25 when Mr. - -

1 THE COURT: Excuse me, before I forget something.
2 The John Pelitere that you refer to, is
3 he the same John Pelitere who was sub-
4 sequently convicted or pled guilty to
5 a counterfeiting charge, or is this a
6 different John Pelitere, do you know?
7 THE WITNESS: I don't know if he was or not.
8 THE COURT: Was he convicted? What do you know
9 about John Pelitere?
10 THE WITNESS: Well, I knew that he had an office
11 on West Avenue.
12 THE COURT: When you say "office", what do you
13 mean?
14 THE WITNESS: It was a bookmaking office.
15 THE COURT: And he worked with Mr. Billiteri?
16 THE WITNESS: Yes.
17 THE COURT: Go ahead.
18
19 BY MR. O'KEEFE:
20 Q Did there come a time when you became aware that Mr.
21 Billiteri had been arrested based upon the testimony
22 of Gregory Parness?
23 A Yes.
24 Q And did you ever have a conversation about this with
25 Mr. Billiteri?

1 A Yes.

2 Q And where was that conversation?

3 A It took place at 10 Delaware in the Detention Room.

4 Q That would be the Erie County Penitentiary?

5 A Yes.

6 Q And would you give us, - tell us what Mr. Billiteri
7 told you at that time?

8 A Well, at that particular time, we were all talking
9 about Gregory Parness and what he had done, all the
10 indictments that came out and an attempt was, - I, at
11 that time, and Mr. Billiteri stated he would like to
12 kill Gregory Parness. We all made that statement.

13 Q You said yourself you would like to kill Gregory Parness?

14 A Yes, I did.

15 Q And Mr. Billiteri also said that?

16 A Yes.

17 THE COURT: Was that all was said about this?

18 I mean, everybody said "We would like
19 to kill that guy", is that right?

20 Anything else said? I mean, did anybody
21 make any plans or anything to carry out
22 this scheme?

23 THE WITNESS: No, your Honor.

24 THE COURT: Mr. O'Keefe, so we know where we
25 stand, it seems to me that the use of

1 that word in the American language has
2 now come to such a degraded state, it
3 hardly means anything at all unless there
4 is some other evidence beyond that, so
5 forget about it. For example "Kill the
6 ump" is said by many people in our
7 community who have no desire to do so,
8 but go ahead.

9 MR. O'KEEFE:

There might be some fans who would
like to, your Honor.

11 THE COURT:

There may be, that's right.

13 BY MR. O'KEEFE:

14 Q Mr. DeCicco, did there come a time when you went with
15 Mr. Billiteri to collect a loan?

16 A Yes.

17 Q And can you tell us, approximately, when that took
18 place?

19 A I don't recall exactly when it was.

20 Q Would it have been within the last five years?

21 A Yes.

22 Q Would it have been around 1969 or '70, would it have
23 been after you joined his group?

24 A It was after.

25 Q So it would have been '71?

1 A '71, I believe.

2 Q I see, and could you tell us the circumstances of that
3 particular proceeding?

4 A We went to a Mr. Gallo's place of business on Hertel
5 Avenue and Mr. Billiteri was talking to Mr. Gallo,
6 Chubby Gallo about some money that he had owed him.

7 Q Do you recall how much money?

8 A I don't, at this time.

9 Q Would it have been in the area of \$5,000?

10 MR. ABRAMOWITZ: I object, your Honor.

11 THE COURT: No. I will overrule. Can you
12 recall whether or not that sounds like
13 the amount?

14 THE WITNESS: I could, yes, your Honor.

15 THE COURT: Go ahead.

16

17 BY MR. O'KEEFE:

18 Q And can you recall what Mr. Billiteri said to Mr. Gallo
19 with regard to the collection of this money?

20 A He said that he had to pay the money that he was in
21 arrears. He hadn't been paying.

22 Q What did Mr. Gallo say?

23 A He said that he would pay him.

24 Q Did he make any threats to Mr. Gallo?

25 A Not that I recall, no.

- 1 MR. O'KEEFE: Okay. I have no further questions,
2 your Honor.
- 3 MR. STEWART: Excuse me, your Honor. May I have
4 just a moment with Mr. O'Keefe?
- 5 THE COURT: All right.
- 6 MR. O'KEEFE: If I might ask a few more questions.
- 7 THE COURT: Surely.
- 8
- 9 BY MR. O'KEEFE:
- 10 Q To go back to the beginning of your testimony, Mr.
11 DeCicco, you told us that Mr. Randazzio backed you for
12 membership in this organization?
- 13 A Yes.
- 14 Q Where did you talk to Mr. Randazzio about that?
- 15 A I was in Levenworth with Mr. Randazzio.
- 16 Q You were with Mr. Randazzio in Levenworth?
- 17 A Yes.
- 18 Q And at that point he agreed to back you for membership?
- 19 A Yes.
- 20 Q And what did he tell you to do then in order to gain
21 this membership?
- 22 A To see his brother Victor.
- 23 Q He just told you to go see his brother Victor?
- 24 A Yes.
- 25 Q That is Victor Randazzio?

1 A Yes.

2 Q And did you, in fact, see his brother Victor?

3 A Yes.

4 Q And what did his brother Victor say to you?

5 A He told me what Freddie had told him, that he was
6 sponsoring me and that I was supposed to see him when
7 I got out, which I did, and then we met with Babe.

8 Q And then Victor arranged for you to meet with Babe?

9 A Yes.

10 Q And that's how you became a member of Babe's organization?

11 A Yes.

12 Q When you talked to Victor Randazzio, what did Victor
13 say to you?

14 A He told me that his brother has sent word out to him
15 that he was sponsoring me, he was behind me one hundred
16 per cent.

17 MR. ABRAMOWITZ: May I have a standing objection to
18 this on the basis of hearsay, conclusion,
19 and no basis, in fact, your Honor.

20 THE COURT: I will overrule it. Go ahead.

21
22 BY MR. O'KEEFE:

23 Q He said that his brother had sent word out to you?

24 THE COURT: Will you let Mr. DeCicco testify.

25 You met with Victor and what did he say?

1 THE WITNESS:

He told me that his brother Freddie
2 had sent word out to him in regards to
3 sponsorship and that we were going to
4 meet with certain people and I also did
5 meet with Joe Fino and through this,
6 with Victor, I was told that I would be
7 with Babe Billiteri.
8

9 BY MR. O'KEEFE:

10 Q You say, at one point, you met with Joe Fino. What
11 did Mr. Fino say to you?

12 A Mr. Fino told me that because of Mr. Randazzio's
13 recommendation, that I would be part of the family and
14 that I was to report to him and, - well, that's about
15 the gist of it.

16 Q Well, did he direct you to see Mr. Billiteri then?

17 A Yes.

18 Q Okay, and when you met with Mr. Billiteri, what did
19 Mr. Billiteri say to you?

20 A Mr. Billiteri had known all about it.

21 MR. ABRAMOWITZ:

Objection.

22 THE COURT:

What did he say to you, Mr. DeCicco?

23 THE WITNESS:

Mr. Billiteri told me that he knew
24 what was going on and that I was to be
25 with him.

1 BY MR. O'KEEFE:

2 Q And that you were to report to him?

3 A Yes.

4 MR. ABRAMOWITZ: Object to that leading, your Honor.

5 THE COURT: Yes, it is gross leading here and,

6 Mr. O'Keefe - -

7 MR. O'KEEFE: All right, your Honor.

8 THE COURT: Let us let the witness testify.

9 MR. O'KEEFE: I understand.

10 THE COURT: Mr. DeCicco, you said, and this is
11 leading, but I am going to ask him a
12 leading question. He paid you \$100
13 a week, - Mr. Billiteri?

14 THE WITNESS: Yes.

15 THE COURT: For how long a period?

16 THE WITNESS: Oh, this went on for a few months.

17 THE COURT: All right, and this was shortly
18 after you were out of Levenworth?

19 THE WITNESS: Yes.

20 THE COURT: We can fix that time. After a
21 few months, what occurred?

22 THE WITNESS: Well, after a few months, I was, -
23 there was a case pending and I went
24 through prison.

25 THE COURT: Then you went to prison?

1 THE WITNESS: Yes.

2 THE COURT: During this few months period, what
3 were your duties? What did you do for
4 Mr. Billiteri?

5 THE WITNESS: Nothing, really.

6 THE COURT: Why would he pay you \$100 a week?

7 THE WITNESS: Because I just come out of
8 Levenworth and I didn't have any money.

9 THE COURT: In other words, how often would
10 you see him during this period of time?

11 THE WITNESS: Oh, I would see him a couple of
12 times a week.

13 THE COURT: Did he ever ask you to do anything?

14 THE WITNESS: No.

15 THE COURT: Then you went to jail; then you
16 went to jail?

17 THE WITNESS: Yes.

18 THE COURT: When you came out of jail, what
19 happened then as far as Mr. Billiteri
20 is concerned?

21 THE WITNESS: When I came out of jail, I went to
22 Florida.

23 THE COURT: All right. Did you have any con-
24 tact with Mr. Billiteri then?

25 THE WITNESS: No.

1 THE COURT:

Did you ever have any contact
with him thereafter?

2
3 THE WITNESS:

Oh, I saw him when I come back in,
when I came back in.

4
5 THE COURT:

When you saw him, what happened?
Did he ask you to do anything? You had
this one incident when you met Mr. Gallo?

6
7
8 THE WITNESS:

Yes.

9 THE COURT:

Anything happen after that?
Did he talk to you about, - did Mr.
Billiteri say anything to you about the
Gallo loan after the meeting with Mr.
Gallo?

10
11
12
13
14 THE WITNESS:

He did mention Mr. Gallo paid some
money.

15
16 THE COURT:

He paid some money?

17 THE WITNESS:

He did pay.

18 THE COURT:

19 Mr. DeCicco, you had all of this
20 conversation which I reluctantly let in
21 about your talks with Randazzio, your
22 talks with Mr. Fino and eventually
23 meeting with Mr. Billiteri. This seems
24 to me as if something big was going to
25 occur, but then you met him and he gave
you a hundred dollars a week. It seemed

1 like he just wanted to help you out
2 because you were in trouble and you
3 needed some money. Was it a gift only?
4 In other words, was it because Randazzio
5 and Fino said "Russ DeCicco, he is just
6 out of jail and he doesn't have any
7 money, help him out"? Was there any-
8 thing more to it than that?

9 THE WITNESS:

Well, they wouldn't have done that
unless we were on friendly terms or - -

11 MR. ABRAMOWITZ:

Objection, your Honor.

12 THE WITNESS:

I was closely associated with them.

13 MR. ABRAMOWITZ:

Your Honor - -

14 THE COURT:

I know this is fine, friendly terms,
15 but you were talking about being some
16 kind of a member of some kind of an
17 organization, but you didn't do anything.
18 Did you ever do anything for Mr.
19 Billiteri?

20 THE WITNESS:

No.

21 THE COURT:

All right. Any other questions?

22
23 BY MR. O'KEEFE:

24 Q Just one or two. Was it customary in this criminal
25 syndicate - -

1 MR. ABRAMOWITZ:

Objection, your Honor.

2 BY MR. O'KEEFE:

3 Q For someone coming out of prison, - to help them out.

4 THE COURT:

I will sustain the objection to

5 that.

6 BY MR. O'KEEFE:

7 Q What was the name of this criminal group you belonged
8 to?

9 MR. ABRAMOWITZ:

Objection.

10 THE COURT:

11 I will sustain it. It is just a
12 lot of name calling so far. That is all
13 I see in all this business with Mr.
14 DeCicco. Mr. DeCicco has known Mr.
15 Billiteri since 1960. This was his
16 testimony. He said that he was in
17 Levenworth and at that time, Mr.
18 Randazzio, Fred Randazzio said that when
19 he got out to contact certain people,
20 that he would become a member of an
21 organization and then when he got out
22 he finally met with Billiteri. He knew
23 that he was in loan sharking and book-
24 making. He was at his place of business;
25 on how many occasions were you there at
the bookmaking shop?

1 THE WITNESS:

I was there a few times, your
2 Honor.

3 THE COURT:

A few times. Did you ever do any
4 work there, take any phone calls?

5 THE WITNESS:

No, no.

6 THE COURT:

7 That he saw other people working,
8 he knew other people were working. He
9 had a conversation with Mr. Billiteri
10 when Gregory Parness had testified against
11 him and they both said at that time that
12 they would like to kill Gregory Parness
13 and nothing further occurred after that.
14 That he went to a place of business on
15 Hertel Avenue where Mr. Billiteri had a
16 conversation with a man who owed him some
17 money and there were no threats and later
18 on he understood the money was paid and
19 he received a hundred dollars a week for
20 a period of about five or six months,
21 but as far as I can understand from his
22 conversation, he never did anything for
23 Billiteri. Is there anything else to
24 this, more to this, Mr. DeCicco? Did you
25 ever go around and give messages to
people that if they didn't pay money they

1 would be in trouble with Billiteri or
2 anything like that?

3 THE WITNESS: No.

4 THE COURT: Did you know Gregory Parness at
5 the time?

6 THE WITNESS: Yes.

7 THE COURT: Were you ever present when Parness
8 talked to Billiteri about fencing any
9 merchandise?

10 THE WITNESS: Well, what was told to me by
11 Gregory Parness.

12 THE COURT: All right.

13 MR. ABRAMOWITZ: Your Honor, again I object to that
14 too.

15 THE COURT: What did he tell you, - what did
16 Parness tell you?

17 MR. ABRAMOWITZ: Objection.

18 THE COURT: I will overrule it.

19 THE WITNESS: Well, he told me that Mr. Billiteri
20 was trying to shake him down for some
21 fur coats, a robbery that took place,
22 Sidney Gross, and there was over \$200,000
23 worth of fur coats taken and that Mr.
24 Billiteri had Mr. Parness in his cellar
25 and threatened him and also used, - he

1 used, - he was physical with him and
2 he wanted to know if Gregory Parness
3 had part in this robbery.

4 THE COURT:

All right. Did you ever talk to
5 Billiteri about that?

6 THE WITNESS:

Yes, I did.

7 THE COURT:

All right. What did he tell you
8 about it?

9 THE WITNESS:

At that particular time, I didn't
10 want anybody to know what my associa-
11 tion was with this robbery because I
12 was involved in it and I had made
13 arrangements to sell the fur coats in
14 New York and Mr. Billiteri heard from
15 Mr. Parness or someone, - I don't know
16 who it was, - but I got a telephone call
17 and I went to Mr. Billiteri's home and
18 we met in the cellar of Mr. Billiteri's
19 home. No, his brother Matthew, -
20 Jerry's home, and at this particular
21 time, we discussed the situation and I
22 did say that I was involved in it and
23 that what I would do is, I would save
24 half of the fur coats and I would give
25 Mr. Billiteri a list of what I had and

1 he, in turn, would make arrangements to
2 sell the fur coats and he would make a
3 certain amount of money.

4 THE COURT:

All right. Was this before, - I
5 thought the coats were sold in New York,
6 or you were just dealing with people in
7 New York to sell them?

8 THE WITNESS:

Yes.

9 THE COURT:

What happened, were some of the
10 coats eventually passed on to Mr.
11 Billiteri?

12 THE WITNESS:

What happened, your Honor, is that
13 before I actually had a chance to trans-
14 port, - transport the coats, they were
15 confiscated.

16 THE COURT:

So the coats never went to Billiteri.
17 In his conversation, - now, Parness said
18 that he not only threatened him, but
19 Billiteri and somebody else beat him up.
20 What was the tone of the conversation
21 with you?

22 THE WITNESS:

With Mr. Billiteri?

23 THE COURT:

Yes.

24 THE WITNESS:

Well, Mr. Billiteri, at that time,
25 didn't know I was involved and like I

1 said before, I didn't want it to be
2 public knowledge that I was involved,
3 but then it had to come out that I was
4 involved.

5 THE COURT:

You certainly could get your hands
6 on the coats, that became clear in the
7 conversation, right?

8 THE WITNESS:

Yes, yes.

9 THE COURT:

Did you discuss with him money,
10 how much was to be paid or what the
11 arrangement was going to be?

12 THE WITNESS:

Yes, I did.

13 THE COURT:

Did he tell you what he was going
14 to do with the coats?

15 THE WITNESS:

I was to give him a list of what
16 I was going to, - of what I had avail-
17 able to me and he, in turn, was going to
18 make arrangements with different people
19 that he knew, people that wanted to
20 buy fur coats at cut rate prices and
21 whenever he had customers that wanted
22 fur coats, I was to bring him "x"
23 amount of coats, whatever was called
24 for and he would dispose of them.

25 THE COURT:

Did he tell you, or did you know

1 where or did he tell you where he was
2 going to dispose of the coats?

3 THE WITNESS:

Well, he did say that, you know,
4 that they would be friends, friends of
5 friends that wanted fur coats.

6 THE COURT:

Mr. DeCicco, what about did you go
7 to him on any other occasion when there
8 was a burglary about any other kind of
9 merchandise?

10 THE WITNESS:

I don't remember if I did, your
11 Honor.

12 THE COURT:

What about the paintings that you
13 were involved with? Did you ever talk
14 with Billiteri about the paintings?

15 THE WITNESS:

No, no.

16 THE COURT:

All right. Anything else, Mr.
17 Abramowitz?

18 MR. ABRAMOWITZ:

Your Honor, may I have a short
19 recess at this point to discuss his
20 testimony?

21 THE COURT:

All right. I have a grand jury
22 problem and we will take a short
23 recess.

24 MR. ABRAMOWITZ:

Thank you, your Honor.

25 THE COURT:

Mr. Billiteri, why don't you go

upstairs.

MR. ABRAMOWITZ:

Can we have our client with us,
your Honor?

THE COURT:

Yes, but go upstairs. Mr.
Billiteri, go up with the Marshal and
Mr. Abramowitz, you may talk up there,
you and Mr. Boreanaz with Mr. Billiteri.

MR. ABRAMOWITZ:

Thank you, your Honor.

THE COURT:

And, Mr. DeCicco, we will have you
back in a minute. Others all stay in
your places until Mr. Billiteri and the
witness walk out. All right. All
spectators remain for the time being.
Mr. Cohen, could you bring your witness
up, please.

(Recess taken at 10:58 p.m.)

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

1 PROCEEDINGS:

April 30, 1975, 11:28 a.m.

2 APPEARANCES:

As before noted.

3 (Plaintiff-Petitioner present.)

4
5 R U S S E L L D E C I C C O, a witness called by and in
6 behalf of the defendant-respondent, having been previously
7 duly sworn, resumed the witness stand and testified further
8 as follows:

9
10 DIRECT EXAMINATION BY MR. O'KEEFE (Resumed):

11 MR. ABRAMOWITZ: Your Honor, we have no questions
12 of this witness.

13 MR. O'KEEFE: Your Honor, I have a few more
14 questions.

15 THE COURT: All right.

16 MR. O'KEEFE: I just want to try to clear it up
17 a bit.

18 THE COURT: All right.

19
20 BY MR. O'KEEFE:

21 Q Mr. DeCicco, referring back to the fur incident where
22 Mr. Billiteri and yourself discussed the sale of the
23 stolen furs, what was your agreement with regard to
24 these furs?

25 A The furs I was going to give Mr. Billiteri, we were
going to split the proceeds down the middle, him and I.

1 Q Now, whatever he sold, you would get half and he would
2 get half?

3 A Yes.

4 Q Now, did there ever come a time when you gave Mr.
5 Billiteri a diamond?

6 A Yes.

7 Q And how valuable was that diamond?

8 A Worth about a thousand dollars.

9 Q And why did you give him that diamond?

10 A Well, I gave him that diamond because he had asked me
11 if I can get a diamond for him at that particular time
12 and I did have some diamonds in my possession and I
13 gave it to him.

14 Q Was that a stolen diamond?

15 A Yes.

16 Q Was he entitled to that diamond?

17 A Yes.

18 Q Why was he entitled to it?

19 MR. ABRAMOWITZ: I don't understand. I object to
20 all of this.

21 BY MR. O'KEEFE:

22 Q Why was he entitled to that diamond?

23 THE COURT: Overruled.

24 THE WITNESS: Well, he was entitled to it simply
25 because he was my boss, more or less.

1 I was working for him.

2 MR. ABRAMOWITZ: I ask that be stricken, your Honor,
3 the "more or less" again.

4 THE COURT: All right. Overruled.

5 THE WITNESS: And he was entitled to it and I
6 gave it to him.

7 BY MR. O'KEEFE:

8 Q He was entitled to it because you worked for him?

9 A Yes.

10 Q Going back then to the hundred a week he paid you after
11 you came out of Leavenworth, were you entitled to that
12 money?

13 A Yes.

14 Q Why were you entitled to it?

15 A I was entitled to it because I was part of the family.

16 Q Now, going forward, do you remember the stolen bonds
17 that you testified to last week at a trial?

18 A Yes.

19 Q Was there some \$8-million I believe you said?

20 A Yes.

21 Q Did you pay any proceeds of your profits out of that
22 deal to anyone?

23 A Yes, I did.

24 Q Who did you pay?

25 MR. ABRAMOWITZ: Objection, your Honor.

1 THE COURT:

Overruled.

2 THE WITNESS:

I gave a certain amount of those
3 proceeds to Mr. Pieri, Sam Pieri
4 through his wife.

5 MR. ABRAMOWITZ:

May I have a time period on this?

6 THE COURT:

Just a minute. I think there is, -
7 there are several important considera-
8 tions.

9 MR. O'KEEFE:

Yes, your Honor.

10 THE COURT:

When did this occur?

11 THE WITNESS:

Pardon, your Honor?

12 THE COURT:

We had the testimony. That was in,
13 as I recall, the bond incident when you
14 got about, roughly, - when you were
15 supposed to get around \$50,000, you
16 got some monies, that was somewhere in
17 the middle of 1973, - March of 1973?

18 THE WITNESS:

Yes, your Honor.

19 THE COURT:

You gave some money to Mr. Pieri.
20 I hope you are going to connect this up
21 some way with Mr. Billiteri.

22 MR. O'KEEFE:

If I might make an offer of proof
23 here, I want to establish that he gave
24 this money to Mr. Pieri because Mr.
25 Pieri was entitled to it and because

1 this is the way that this criminal
2 syndicate works.

3 MR. ABRAMOWITZ:

I don't think that that is relevant.

4 THE COURT:

5 I don't know how you escalate the
6 words "entitled to". I have never heard
7 that phrase before and I don't know what
8 it means. Did you give any of this
9 money to Mr. Billiteri?

10 THE WITNESS:

No.

11 THE COURT:

Was he going to receive any of it?

12 THE WITNESS:

No.

13 THE COURT:

What relevancy is there to that?

14 MR. STEWART:

15 Your Honor, if I may be heard, it
16 seems to me the problem that was exper-
17 ienced earlier with this witness was
18 that it wasn't clear why he was receiv-
19 ing the hundred dollars and it seemed
20 to be something that was occurring in a
21 vacuum. In fact, it was something, your
22 Honor, that occurred pursuant to a
23 regularized procedure that is understood
24 among these people that he has described
25 and that is the essence of, it seems to
me, the organized - -

THE COURT:

That is argument, Mr. Stewart.

1 MR. STEWART:

Yes, sir, so we would like to
2 elicit the facts from the witness, which
3 is difficult, admittedly.

4 THE COURT:

That is not the facts. The facts
5 are, he got a hundred dollars a week and
6 as far as we know, he didn't do anything.
7 Perhaps you may make some inferences
8 out of that, but what is customary in
9 the trade, it is difficult to put your
10 hands on and there are some trades that
11 I am familiar with where a fellow is in
12 need of money that his fellow workers
13 will band together and pay him when he
14 is disabled, certain sums of money and
15 if that is the, - if he is familiar with
16 that custom here, I will let him put it
17 on the record.

18 MR. STEWART:

Yes, sir, that is all.

19 THE COURT:

And I will let him do it, but be-
20 fore I am going to consider it, I want
21 you to know I want to have some factual
22 backing for it.

23 MR. STEWART:

Yes, sir. That is what we are
24 trying to establish, your Honor.

25 THE COURT:

And also the fact of Mr. Billiteri's

1 knowledge of this particular kind of
2 endeavor or custom. I will let you
3 testify to this business about the other
4 incident. What happened?

5 THE WITNESS:

What was the question?

6
7 BY MR. O'KEEFE:

8 Q Did you give any of the proceeds from the stolen bonds
9 to anybody?

10 A Yes, I did, to Mr. Pieri.

11 Q Mr. Sam Pieri; how much did you give him?

12 A Roughly about five thousand.

13 Q And why did you give it to him?

14 A I gave Mr. Pieri that money because at that particular
15 time I was going to be with Mr. Pieri in Florida. He
16 was going to be my boss in Florida and - -

17 MR. ABRAMOWITZ:

Your Honor - -

18 THE WITNESS:

19 Because of this, he was entitled
to it.

20 MR. ABRAMOWITZ:

21 Objection, your Honor. I think at
22 the very least, we should be entitled to
23 the conversations that occurred, not to
24 the conclusions as to what the conversa-
tions were all about.

25 THE COURT:

I agree. We can get conversations.

1 BY MR. O'KEEFE:

2 Q Okay. What did you say to Mr. Pieri with regard to
3 this five thousand?

4 A I told Mr. Pieri that I was engaged in negotiating for
5 some securities at that time and that when I did
6 finalize the transaction, that I was going to give him
7 "x" amount of dollars.

8 Q And what did he say to you?

9 A He appreciated it very much.

10 Q Okay. Would you say that is the custom in this criminal
11 business?

12 A Yes.

13 Q To share the profits with your boss?

14 A Yes.

15 MR. ABRAMOWITZ: Your Honor, objection. It hasn't
16 even been established in here that there
17 is even a criminal syndicate.

18 THE COURT: I know that and I will permit the
19 testimony to stand and let you argue
20 about it later.

21
22 BY MR. O'KEEFE:

23 Q Now, did there come a time when you had a conversation
24 with Sam Lagatutta about r. Billiteri?

25 A Yes.

1 Q And would you tell us what Mr. Lagatutta told you at
2 that time?

3 MR. ABRAMOWITZ: Objection, your Honor. This is
4 blatant hearsay.

5 THE COURT: Can you tell us when this occurred?
6 I will overrule the objection.

7 THE WITNESS: This was - -

8 THE COURT: I suppose you talked to Mr.
9 Lagatutta a number of times through the
10 years, right?

11 THE WITNESS: Yes, I have, your Honor.

12 THE COURT: What is the general, - what is the
13 nature of the conversations? I will let
14 you lead to that extent if we can pin
15 it down.

16
17 BY MR. O'KEEFE:

18 Q Did you talk to Mr. Lagatutta about he and Mr. Billiteri's
19 dealings with burglars?

20 A Yes.

21 Q And can you tell us what he told you?

22 A That he was shaking all these burglars down.

23 MR. ABRAMOWITZ: Objection.

24 THE COURT: When did you talk to him?

25 THE WITNESS: That was in the 60's, your Honor.

1 THE COURT: Back in the 60's?

2 THE WITNESS: Yes.

3 THE COURT: Late 60's?

4 THE WITNESS: Oh, '67, '66, in through there.

5 I'm not quite sure.

6 THE COURT: I will overrule the objection.

7

8 BY MR. O'KEEFE:

9 Q And did he mention any particular burglars that they

10 had shaken down?

11 A Yes. He said that they were shaking down Stanley

12 Seneca and Gregory Parness and Frankie D'Angelo and he

13 mentioned more names.

14 Q Did he ever mention Jimmy Brocato?

15 A Yes, he had mentioned Brocato.

16 Q And he told you that they were shaking down Jimmy

17 Brocato?

18 A Yes.

19 MR. ABRAMOWITZ: Objection to the leading again.

20 THE COURT: Overruled.

21

22 BY MR. O'KEEFE:

23 Q Did you ever talk to Frankie D'Angelo about this?

24 A Yes.

25 Q Did he tell you they were shaking him down?

1 MR. ABRAMOWITZ: Same objection, your Honor.

2 THE WITNESS: Yes.

3 THE COURT: Overruled.

4

5 BY MR. O'KEEFE:

6 Q Did you ever talk to Stanley Seneca - -

7 THE COURT: What did they tell you about shaking
8 down. We know what that means, but
9 what did Lagatutta tell you, what
10 happened? Do you remember any particular
11 incidence?

12 THE WITNESS: Well, what he meant by that, your
13 Honor, was that when they shake down
14 these burglars, they shake them down for
15 the proceeds of the burglary or the
16 merchandise from the burglary itself
17 and they wanted a piece of it.

18 THE COURT: All right. Did Lagatutta, - can
19 you remember any particular burglary
20 that he talked to you about where he and
21 Billiteri were doing some particular
22 things?

23 THE WITNESS: He did mention it to me, your Honor,
24 but I just can't - -

25 THE COURT: Do you remember any merchandise

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that was discussed with him, television sets, diamond rings?

THE WITNESS: Well, all that - -

THE COURT: Silverware?

THE WITNESS: All that was brought up, your Honor, about the different type of merchandise that was involved because on these burglaries, naturally, you come into possession of a variety of items.

THE COURT: All right. What about you, did they come to you, shake you down during this period of time?

THE WITNESS: Well, in 1967 when Mr. Bill Teri called me to his house.

THE COURT: When you had talked about the Kirs?

THE WITNESS: Yes.

THE COURT: And the other occasions?

THE WITNESS: Well, that was my personal experience.

THE COURT: Did you have any other personal experiences?

THE WITNESS: Not to my recollection.

THE COURT: We had the conversation with Parness and did you ever talk to Seneca or D'Angelo about that incident?

1 THE WITNESS:

Yes.

2 THE COURT:

What did they tell you?

3 THE WITNESS:

4 They told me the same thing, that
5 they were being, - they were being
6 shaken down for money and the proceeds
7 of the burglary.

8 THE COURT:

All right, and what did Seneca tell
you about it?

9 THE WITNESS:

10 Seneca told me the same thing, that
11 he was - -

12 THE COURT:

13 Can you explain why, - we had testi-
14 mony here by Mr. Parness before. He
15 said that Lagatutta and Billiteri beat
16 up himself, Seneca and D'Angelo. Why
17 would these, - can you explain why these
18 people would permit themselves to be
19 beaten up? Why would they, when you say
20 "shaken down", they would get part of
21 the proceeds, why would they give part
22 of the proceeds to Billiteri and
23 Lagatutta, can you explain that?

24 THE WITNESS:

25 Yes, I can, because if they did not
give up part of the proceeds from the
burglaries, they would be constantly
beaten.

1 THE COURT: Who would beat them?

2 THE WITNESS: Well, Mr. Lagatutta, he was known
3 for that.

4 THE COURT: Mr. Lagatutta, he is almost 350,
5 400 pounds, isn't he, a great big man?

6 THE WITNESS: Yes.

7 THE COURT: Right, do you agree with me?

8 THE WITNESS: Yes.

9 THE COURT: Mr. Billiteri, he is a big heavy
10 man too, isn't he?

11 THE WITNESS: Yes.

12 THE COURT: Do you mean to say they beat up
13 fellows like Seneca, Parness and
14 D'Angelo?

15 THE WITNESS: That's right, your Honor.

16 THE COURT: Do you mean they couldn't run away?
17 I am not trying to be funny. I want to
18 get the facts here.

19 THE WITNESS: Well, I am trying to tell you the
20 facts.

21 THE COURT: Do you mean they would stay there
22 and let these two people beat them up?

23 THE WITNESS: Yes, they would, your Honor.

24 THE COURT: Any other weapons used that you
25 know of?

1 THE WITNESS:

No.

2 THE COURT:

They didn't have to go. Why did
3 they go to the house of Billiteri and
4 Lagatutta?

5 THE WITNESS:

Because they were called there and
6 they were told to come there.

7 THE COURT:

If they didn't come there, what
8 would happen to them?

9 THE WITNESS:

They would go looking for them.

10 THE COURT:

Who would go looking for them?

11 THE WITNESS:

Babe would go looking for them,
12 Mr. Billiteri, Sammy Lagatutta and who-
13 ever else they had with them at the time.

14 THE COURT:

Did Billiteri and Lagatutta have
15 anybody else working for them that would
16 beat up people that you know of?

17 THE WITNESS:

I can't think of offhand.

18 THE COURT:

Go ahead.

19

20 BY MR. O'KEEFE:

21 Q Did Patty Napoli work for Mr. Billiteri?

22 A Yes, he did.

23 Q Would he have been in the same position to beat up
24 people?

25 A Yes, he would.

1 MR. ABRAMOWITZ: I ask that be stricken, your
2 Honor.

3 THE COURT: I will strike that. Anything else,
4 Mr. O'Keefe?

5 MR. STEWART: Yes.

6
7 BY MR. O'KEEFE:

8 Q Referring back to the 60's now, did you ever have a
9 conversation with Matthew Billiteri about Albert
10 Billiteri?

11 MR. ABRAMOWITZ: Same objection, your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: Yes.

14
15 BY MR. O'KEEFE:

16 Q And Matthew is Mr. Billiteri's brother, is that correct?

17 A Yes.

18 Q And what did he tell you about Mr. Billiteri?

19 A He told me that his brother was, - he was a made guy.

20 Q And what does that mean to you?

21 MR. ABRAMOWITZ: Objection, your Honor. There has
22 been no establishment - -

23 THE COURT: Overruled.

24 THE WITNESS: That meant that he was a member of
25 the Mafia, whatever you want to call it.

1 MR. ABRAMOWITZ: Objection, your Honor, and ask that
2 that be stricken.
3 THE COURT: I will let it stand.
4
5 BY MR. O'KEEFE:
6 Q Are you a made guy, Mr. DeCicco?
7 A Yes.
8 Q Okay.
9 MR. ABRAMOWITZ: I ask that be stricken too, your
10 Honor.
11 THE COURT: I will strike it.
12 MR. O'KEEFE: May we have one minute?
13 THE COURT: Mr. O'Keefe, I am not going to
14 consider that.
15
16 BY MR. O'KEEFE:
17 Q Mr. DeCicco, we talked earlier about Mr. D'Angelo,
18 Mr. Seneca, Mr. Parness?
19 A Yes.
20 Q Were these people made guys?
21 A No.
22 Q No, they were not?
23 A No.
24 MR. ABRAMOWITZ: Objection.
25 THE COURT: I have enough of name calling, Mr.

1 O'Keefe. I don't know what that word
2 means. It means absolutely nothing.
3 I told you when we started, we should
4 have facts as far as possible. To call
5 a man a main man, a main guy, or whatever
6 it is, is not a fact. They can call
7 you that. What difference does it make?
8 Any other questions?

9 MR. O'KEEFE:

I don't think so.

10 THE COURT:

Do you have any questions, Mr.

11

Abramowitz, Mr. Boreanaz?

12 MR. BOREANAZ:

Just a moment, your Honor.

13 MR. ABRAMOWITZ:

Your Honor - -

14 THE COURT:

Yes.

15 MR. ABRAMOWITZ:

16 With the understanding that we can
17 refer to other testimony of any witness
18 that occurred in a prior proceeding in
19 our later argument, we have no questions
20 of this witness.

21 THE COURT:

22 All right. I think that is certainly,
23 it seems to me, the case here. We have
24 had extensive records in this court and
25 I suppose in other courts and as far as
prior testimony, prior incidents are
spread out in various records, that either

1 side is entitled to refer to them and
2 I will certainly do that.
3 MR. ABRAMOWITZ: Thank you, your Honor.
4 THE COURT: All right. I believe that is all,
5 Mr. DeCicco. Thank you.
6 MR. O'KEEFE: At this time, your Honor, the
7 Government has finished with its witnesses
8 and we would like to offer certain
9 documents in evidence.
10 THE COURT: All right.
11 MR. O'KEEFE: The first, - you have a copy of
12 this already, - is the proceedings of
13 May 24, 1972, which was the sentencing
14 of Mr. Billiteri.
15 MR. ABRAMOWITZ: No objection, your Honor.
16 THE COURT: I believe that is already part of
17 the record and you filed a memorandum.
18 MR. O'KEEFE: Right. I just wanted to make sure
19 these things are before the Court.
20 THE COURT: We have the sentencing proceeding.
21 We had the plea proceeding before. I
22 suppose that is part of the record.
23 MR. O'KEEFE: Yes, your Honor.
24 THE COURT: Why don't you just go ahead, Mr.
25 O'Keefe.

1 MR. O'KEEFE: Then I would like to offer the
2 presentence report of Mr. Billiteri
3 which I believe everyone has a copy of.
4 MR. ABRAMOWITZ: It is in the record, I believe.
5 THE COURT: All right.
6 MR. O'KEEFE: I would like to offer the affidavit
7 of Curtis Crawford, the Regional Director
8 of the Parole Board of 16 April, '75 and
9 its attachments which I believe are
10 already before the Court.
11 MR. ABRAMOWITZ: Yes, I believe this is before the
12 Court already for whatever it is worth.
13 THE COURT: We will mark it for, as you say,
14 Mr. Abramowitz, for whatever it is worth.
15 MR. ABRAMOWITZ: Thank you, your Honor.
16 MR. O'KEEFE: I would like to offer the retyped
17 transcript of the earlier parole hearing
18 of December 11, 1974.
19 THE COURT: All right.
20 MR. O'KEEFE: I would like to offer an affidavit
21 from Special Agent Richard Schaller of
22 the Federal Bureau of Investigation. I
23 have a copy for Mr. Abramowitz.
24 THE COURT: Is this in the record before?
25 MR. O'KEEFE: No, your Honor. This is new matter.

1 MR. ABRAMOWITZ: May I have some time to look at
2 this, your Honor?
3 THE COURT: Do you want to look at that?
4 MR. ABRAMOWITZ: Yes.
5 THE COURT: Mr. O'Keefe.
6 MR. O'KEEFE: Yes, your Honor.
7 THE COURT: It seems to me we have two questions
8 here before us today. Number one, was
9 the designation of Mr. Billiteri as
10 "OC" organized crime by the Parole
11 Board, was that in keeping with their
12 own regulations?
13 MR. O'KEEFE: That's correct, your Honor.
14 THE COURT: And the other part of the problem
15 is about the offense behavior; did
16 their determination of high severity,
17 was that justified by the records here?
18 MR. O'KEEFE: Yes, your Honor.
19 THE COURT: We have heard no testimony about, -
20 we have heard the testimony, if I under-
21 stand correctly, was directed at whether
22 or not the "OC" designation was right.
23 MR. O'KEEFE: That's correct.
24 THE COURT: We have had no testimony about
25 the offense behavior.

1 MR. O'KEEFE:

No, your Honor. I would rely on the Government's case for the high severity rating would rely on all of the documents which are before the Court and I would like an opportunity to argue that they, in fact, do support the high severity rating.

8 THE COURT:

I would like to ask both of you some questions about that and then we could maybe set some kind of, - determine what to do next, but why don't you read the affidavit of Mr. Schaller and then we can determine what to do. Mr. Boreanaz and Mr. Abramowitz, will you have any evidence in this hearing?

16 MR. ABRAMOWITZ:

We may, your Honor. I don't think they would be more than documentary, evidence from other proceedings.

19 MR. O'KEEFE:

Your Honor, I would like also to offer in evidence the grand jury testimony which supports the original indictment in this case which is the testimony of Bernard Spaziano, Joseph LaPorta and Donald Tanhause.

25 MR. ABRAMOWITZ:

I see no authority for that. It is

1

supposed to be secret.

2

THE COURT:

It is testimony under oath. I
will consider it.

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MR. ABRAMOWITZ:

I would like the opportunity then
to cross examine these people. We heard
what happened, your Honor, when people
have the opportunity to make statements
where there is no cross examination, no
one insisting that the facts be there,
that the truth be there and if these
people are available and I presume they
are, I submit, your Honor, we have the
right to cross examine them. They are
available and apparently, in the
Government's control. I see no reason
why they shouldn't be brought here,
your Honor.

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THE COURT:

I don't know whose control they
are in.

19

20

MR. ABRAMOWITZ:

In any event, the Government hasn't
shown if they are available.

21

22

MR. O'KEEFE:

Your Honor, this is not an adver-
sary hearing.

23

24

THE COURT:

There is a serious difficulty,
Mr. O'Keefe.

25

1 MR. O'KEEFE:

I understand.

2 THE COURT:

When the plea was taken at that
3 time, and the Government had a choice,
4 the plea was offered to conspiracy, but
5 at that time, - and you were there - -

6 MR. O'KEEFE:

Yes, your Honor.

7 THE COURT:

And my description of the scene,
8 I will try to do it as well as I can,
9 but as I understand it, Mr. Billiteri,
10 with counsel, there was a recitation
11 by you of the factual basis.

12 MR. O'KEEFE:

Yes, your Honor.

13 THE COURT:

And certainly, Judge Henderson's
14 determination under Rule 11 that there
15 was a factual basis for the plea was
16 clearly correct. There is no problem
17 about that, but on the other side of
18 the coin, Mr. Billiteri, as far as his
19 admission, he talked only about a tele-
20 phone call. I suppose that you can
21 argue that the plea of guilty was to
22 the facts as related, but that wasn't,
23 evidently, that wasn't the way things
24 were handled because there there were
25 very clear statements by counsel on the

1 record saying "We are admitting to
2 making a telephone call; we are willing
3 to plead guilty to the charge placed
4 against us; we do it voluntarily", so
5 that the whole thing, as far as the
6 severity problem, if you look at the
7 factual basis, it would seem that the
8 Parole Board's decision was justified.
9 On the other hand, if you look at the
10 way the admissions were made by
11 defendant that then his dealing with
12 this thing was on the periphery and so
13 I think it raises a serious problem
14 about whether on this record the Parole
15 Board was entitled to go ahead and put
16 it in a high severity rating because
17 at the plea when the plea was offered,
18 it seems to me that the Government had
19 a choice then. They could have said,
20 "No, we want to go to trial; we are
21 not going to let the defendant come
22 in here to court and say, 'Well, I am
23 partly guilty of this, I will admit
24 guilt, I'm willing to be sentenced',"
25 like a nolo, - almost like a nolo

1 contendre plea, so I just think that
2 it raises a problem. As Mr. Abramowitz
3 points out, I think there is a difficulty
4 of permitting grand jury testimony in
5 evidence because I suppose this sort of
6 follows what you have stated to Judge
7 Henderson at the time of the taking of
8 the plea. Is that right?

9 MR. O'KEEFE:

 Yes, your Honor.

10 THE COURT:

 So that really, it doesn't, - the
11 fact that these people testified to
12 this at an earlier time, - you summarized
13 what they said so it really doesn't add
14 anything more to it.

15 MR. O'KEEFE:

 I think to make the record complete,
16 you have their sworn testimony under
17 oath and it should be made part of the
18 record.

19 MR. BOREANAZ:

 Your Honor, the record shows that
20 I was counsel for Mr. Billitani at the
21 time the plea was entered and, of course,
22 there were a multitude of problems in-
23 volved in this case so far as the
24 Government is concerned. Some of the
25 testimony that is proffered here, for

1 example, one of the witnesses had
2 earlier testified directly to the
3 contrary and been indicted for perjury
4 and then came in and changed his testi-
5 mony and so forth and so on. That part
6 of it is, of course, not offered at this
7 point by the Government.

8 MR. O'KEEFE:

I am certainly willing to make it
9 available.

10 MR. BOREANAZ:

No. The point is there is no end
11 to this then once we get ourselves in.
12 In effect, we are relitigating the
13 whole thing. Both sides had options
14 available to them at the time the plea
15 was offered. The Government was satis-
16 fied at that point and the defendant was
17 satisfied.

18 THE COURT:

It was a sweetheart contract then.

19 MR. BOREANAZ:

That is correct, your Honor, and
20 now we are going to relitigate all of
21 that and the Parole Board has the option
22 and now the Government has the option
23 to come in and say "That was a good deal
24 then, but now we don't like it."

25 MR. O'KEEFE:

The Government is not saying anything

1 like that.

2 THE COURT:

3 You were, because you see you could
4 have said at that time, "Mr. Boreanaz,
5 look, we are not going to take a plea
6 like that. Your man pleads to the
7 charge, the conspiracy charge without
8 any limits or we go to trial", and you
9 said because you were going to get, and
10 I don't say it was a bad arrangement
11 for either side, - I think it was a fair
12 agreement openly arrived at in open
13 court, but it leaves a serious problem
14 about this business about the severity
15 because if you take, - and you take, -
16 there is an argument, certainly on his
17 side where, if you had a trial, you
18 certainly would have had problems with
19 a witness who had testified to one thing
20 one time and something else another time
21 and the jury might have brought in a
22 verdict of not guilty which is something
23 you were a little bit leery of so that
24 you were willing to say, in this case,
25 "We will go for the conspiracy", which
 is a lesser offense than certainly the

substantive charge placed here.

1
2 MR. O'KEEFE:

Certainly.

3 MR. ABRAMOWITZ:

Your Honor, I also wish to raise
4 the point when Mr. Billiteri pled in
5 1972, I think that Mr. Billiteri should
6 be held accountable for what he con-
7 sidered his probationary term to have
8 been. These standards of severity,
9 high severity, the greatest of severity
10 weren't even in existence at that time,
11 your Honor, and I think those shouldn't
12 be considered at this time. I think we
13 should go back to what it was in 1972.
14 I just raise that as an argument, your
15 Honor.

16 THE COURT:

I will defer. I will think about
17 ruling on whether or not I will consider
18 the grand jury minutes or not. I will
19 tell you. Why don't you read Mr.
20 Schaller's affidavit. Why don't we
21 come back at 2:00 o'clock and, at that
22 time, we can, if you desire to offer
23 any evidence, it may be done then, but
24 as far as you can see, Mr. O'Keefe, you
25 have nothing further.

1 MR. O'KEEFE:

I have a transcript, your Honor,
of a wiretap which was a Court ordered
wiretap which Mr. Boreanaz was aware of
and reviewed the order originally,
which had to do with this case and I
would like to offer this in terms of
corroboration.

8 MR. ABRAMOWITZ:

Your Honor, Section 2515 of Title
18, specifically states that a wiretap
order received not pursuant to those
specific authorizations in that statute
cannot be used in any court, in any
hearing, in any administrative agency
and, in fact, your Honor, even before a
grand jury. Mr. O'Keefe has submitted
a memorandum indicating that at a
parole revocation hearing the exclusion-
ary rules do not apply. In the first
case, your Honor, this, of course, is
not - -

21 THE COURT:

Can we agree upon the circumstances
of how this particular wire surveillance
was obtained?

24 MR. O'KEEFE:

Yes, your Honor. Originally, that
the FBI had put in an application for

1 a wiretap to determine whether or not
2 Mr. Billiteri was in the business of - -
3 THE COURT: This was an application made when
4 and to whom?
5 MR. O'KEEFE: Well, the application was made in
6 1969 and I believe it would have been
7 about early July, - was made to Judge
8 Henderson who authorized it and ordered
9 the wiretap.
10 THE COURT: All right. I suppose the record
11 of that is with the Court?
12 MR. O'KEEFE: Yes, your Honor.
13 THE COURT: All right.
14 MR. O'KEEFE: And in their plea negotiations,
15 this order and the transcript of the
16 wiretap were made available to Mr.
17 Boreanaz at that time and were part of
18 his consideration in making his plea.
19 THE COURT: There was an application and there
20 was an order and evidently, the tap was
21 made. Was there any hearing or argument
22 about the sufficiency, any ruling upon
23 the sufficiency of the affidavit? Was
24 that ever thrashed out in court?
25 MR. BOREANAZ: No, your Honor, and one of the

1 reasons was simply this; we are right
2 back to the same position again. This
3 order was a situation wherein there was
4 purportedly a John Mitchell authorization.
5 It was not authorized by the then
6 Attorney General and that issue, as your
7 Honor will recall, was up in the air
8 at that time. It was a legal issue that
9 had not yet been defined and again, one
10 of the reasons for the Government offer-
11 ing the plea and one of the reasons for
12 the defendant offering the plea was that
13 there was then in existence a question-
14 able legal issue as to whether the
15 material so garnered was admissible
16 and that was part of the bargain. That
17 was part of the consideration on both
18 sides. Judge Henderson specifically
19 asked me to submit to him privately
20 a memorandum on the question as he was
21 considering whether to accept the plea
22 or not and I might add to the Court
23 that it took him many weeks to determine
24 to accept the plea. I did submit such
25 a memorandum to him and in writing and

1 that issue again was all thrashed out.
2 One of the reasons we abandoned the
3 litigation which was then in progress
4 seeking to test the validity of that
5 order was because of the Government's
6 offer of the plea. We are right back where
7 we started again, because, if, in this
8 type of proceeding, if we are going to
9 relitigate all that occurred with re-
10 spect to the negotiation of a plea dis-
11 position, there is no end to this and
12 there will be no pleas in the future.

13 THE COURT:

Mr. Boreanaz, when you talked to
the Government about a plea, did you talk
to them about the wiretap and the order?

16 MR. BOREANAZ:

No question about it, yes.

17 THE COURT:

What was stated there in your
recollection?

19 MR. BOREANAZ:

There was discussion as to whether
or not the order was legal and proper
and as to whether Mr. Mitchell had the
proper authority at that time to so
authorize. There was a motion in progress
seeking to test the validity of that.

25 THE COURT:

When you say motion in progress,

1 was there a paper filed or discussion
2 about "We may file the papers"?

3 MR. BOREANAZ:

There were papers drawn. I would
4 have to look at the file, your Honor,
5 but I know I drew papers and we dis-
6 cussed it.

7 THE COURT:

Mr. O'Keefe, what is your recollec-
8 tion of this particular order, what was
9 the discussion with counsel about this
10 order and the effect upon the resolution
11 of this lawsuit?

12 MR. O'KEEFE:

Maybe if I say something, I may
13 be able to clarify it. Actually, the
14 original order was to intercept conversa-
15 tions relative to extortionate credit.
16 If there were conversations, it was
17 not clear. This conversation I am
18 offering actually has to do with the
19 bookmaking operation of Mr. Billiteri
20 and that was established in the - -

21 THE COURT:

This has to do with, let us say,
22 the organized crime question, but it
23 doesn't have anything to do with the
24 severity question.

25 MR. O'KEEFE:

No.

1 MR. BOREANAZ:

2 Could we have the Government make
3 a statement on the record, your Honor,
4 as to whether my recollection is accurate
5 with respect to the John Mitchell
6 authorization and so forth?

7 THE COURT:

8 At this time, looking back, Mr.
9 O'Keefe, what is your recollection of
10 the Government's attitude towards Judge
11 Henderson's order and the problems that
12 you could foresee?

13 MR. O'KEEFE:

14 Well, if I might explain this,
15 your Honor, I did not consider the wire
16 intercept sufficient to try any kind of
17 an extortionate credit case so we had
18 proceeded in the grand jury with people
19 and we had live testimony and Mr.
20 Boreanaz was aware of that, and if we
21 tried the case, we would not have used
22 this material.

23 THE COURT:

24 Because it has nothing to do with
25 extortionate credit.

MR. O'KEEFE:

That's correct.

MR. ABRAMOWITZ:

Your Honor, in this particular case,
the statute is absolutely clear and the
Supreme Court in a unanimous decision,

1 even taking justices along with them
2 who have written that they do not be-
3 lieve in the exclusionary rule, these
4 justices dealing with Section 2515 have
5 said because Congress specifically
6 mandated that at no administrative
7 hearing, trial, court - -

8 THE COURT:

Wait a minute. You are getting
9 ahead of yourself because, let us say
10 that John Mitchell didn't authorize this,
11 is that what you are telling me?

12 MR. ABRAMOWITZ:

Yes, your Honor.

13 THE COURT:

Let us assume that we have a case
14 where John Mitchell did not authorize
15 the application and the application is
16 made for an order and an order is ob-
17 tained and a defendant comes into court
18 and he pleads guilty. Now, that is the
19 end of it. As far as if he then, - if
20 we assume, in this business, that he
21 had an opportunity to look at the
22 application, to make a judgment about
23 whether he is going to thrash it out
24 or not and he doesn't do it, it seems to
25 me that just ordinary common sense says

1 if he had a chance and he didn't avail
2 himself of it, that ought to be the
3 end of it, but it seems to me in this
4 case, that we had both sides saying
5 "I am not so much interested", - let me
6 say I've had some of these applications
7 and I have ruled some good and some bad,
8 but I think it is off the point in this
9 case, because we have had the discussion
10 between counsel about whether this was
11 a good or bad order under the circumstances
12 and then some compromise was entered into
13 and furthermore, we have the problem
14 here that the offer is made here in this
15 case to determine whether or not Mr.
16 DeCicco was engaged in organized crime
17 activity, - Mr. Billiteri is engaged in
18 organized crime activity, not in the
19 severity situation.

20 MR. ABRAMOWITZ:

21 Your Honor, my point is this, there
22 is no doubt that Mr. Billiteri, after
23 the Supreme Court decision could not
24 come back to this court and attempt to
25 relitigate it. It couldn't be put in
this court again. It is done with and I

1 submit, your Honor, that it is done
2 with again. The Government cannot now
3 come back in and put it back in. It is
4 just done with. It is over, your Honor,
5 and the statute again specifically states
6 it can't be used in front of a grand
7 jury, a hearing, a trial, anything, your
8 Honor.

9 THE COURT:

I can see that. In other words,
by doing it this way, the Government is
getting - -

12 MR. ABRAMOWITZ:

Is getting two bites.

13 THE COURT:

Two bites. It seems to me that
we come back to is it fair.

15 MR. O'KEEFE:

Your Honor, I can - -

16 THE COURT:

And does it make any difference?
I don't know what is in there, but we
heard testimony about Mr. Billiteri's
bookmaking activity.

20 MR. ABRAMOWITZ:

Your Honor, it was our understanding
that we weren't, - that there was not
going to be a trial and thus it wouldn't
be used and it seems unfair to permit
the Government to use it at a second
proceeding in an attempt to keep him in

1 jail longer. That is our position.

2 THE COURT:

3 Take a look at Mr. Schaller's
4 affidavit. We will take a break until
5 2:00 and at that time, tell me your
6 position.

7 MR. ABRAMOWITZ:

8 Your Honor, I have an arraignment
9 in State Court at 1:45. Could we make
10 it 2:15?

11 THE COURT:

12 2:15, all right, Mr. O'Keefe?

13 MR. O'KEEFE:

14 Yes, your Honor.

15 THE COURT:

16 We will be in recess.

17 (Recess taken at 12:10 p.m.)

18 * * * * *

1 PROCEEDINGS:

April 30, 1975, 2:43 p.m.

2 APPEARANCES:

As before noted.

3 (Plaintiff-Petitioner present.)

4
5 THE COURT:

Mr. Boreanaz, Mr. Abramowitz.

6 MR. BOREANAZ:

7 Yes, your Honor. If the Court
8 could assist us on the question, the
9 Government has offered an affidavit by
10 Agent Schaller which, from our reading
11 of it, your Honor, appears to be nothing
12 more than a re-hash of affidavits used
13 by Agent Schaller at the time of the
14 original wiretap application in this
15 very case and then subsequently used on
16 the date of the arrest of the defendant
17 in connection with the procurement of
18 a search warrant to search the premises
19 of the defendant's house at the time he
20 was arrested, inasmuch as he was origin-
21 ally arrested on a Magistrate's warrant.
22 Mr. Schaller's affidavit is entirely
23 based upon the word of unnamed informants.
24 I would presume that we now have before
25 the Court, those self same informants
in the persons of Messrs. DeCicco,

1 Parness and Zito, so I don't see what
2 Mr. Schaller's affidavit adds to this
3 proceeding at all.

4 MR. ABRAMOWITZ:

If I may briefly add two, your
5 Honor. The purpose of the hearing
6 indicated in your decision was to speci-
7 fically avoid these affidavits which
8 didn't name sources and which just said- -

9 THE COURT:

Does Mr. Schaller's affidavit add
10 anything to this, Mr. O'Keefe?

11 MR. O'KEEFE:

Your Honor, Mr. Boreanaz was saying,
12 I believe, that there were three in-
13 formants, Parness and - -

14 THE COURT:

They are all unnamed anyway.

15 MR. O'KEEFE:

I think that he refers to some
16 seven informants. The affidavit, I
17 believe to be admissible. What weight
18 your Honor may want to give to it, of
19 course - -

20 THE COURT:

That is the difficulty here, Mr.
21 Boreanaz. You and I, I think we are
22 both repulsed when people want to come
23 in and make conclusiary statements,
24 that want to repeat things that are
25 said on the street and because of these,

1 we try, to the best of our ability, to
2 try to determine facts in the usual
3 course of the trials we hold. The
4 Parole Board has a much wider and I
5 suppose more difficult problem because
6 they may, under the rules, consider a
7 lot of other information. I would think
8 that we ought to make it part of the
9 record, but frankly, if it is based upon
10 informant information only and these
11 informants aren't otherwise named, that
12 it will not be given very much weight.

13 MR. O'KEEFE:

I appreciate that, your Honor.

14 THE COURT:

We'll make it part of the record.

15 MR. BOREANAZ:

16 Well, your Honor, that leaves then
17 the question of the grand jury testimony
18 that supported this indictment. That
19 appears to be the only element of proof
20 that the Government has offered with
21 respect to one of the two questions that
22 is before your Honor and that would be
the high severity rating.

23 THE COURT:

24 I have thought about that over the
25 noon hour, Mr. Boreanaz, and I think
that we ought to permit that in and

1 consider it part of the record, but
2 I want the Government to know that I am
3 not going to give very much weight to it
4 because we had all this discussion this
5 morning and if the Government wanted to
6 prove that Mr. Billiteri's crime was a
7 very high severity, they could have
8 gone to trial. They didn't do that, so
9 that then they opted for a lesser
10 included offense. I use that phrase in
11 a very broad way, so that it seems to
12 me that although it should be made part
13 of the record, that under the posture
14 here of the hearing, since these indivi-
15 duals are not available here for cross
16 examination and, of course, their
17 testimony goes right to the heart of
18 whether or not this was a very high
19 severity or whether it was not, and I
20 will not accord much weight to the grand
21 jury testimony, so make it part of the
22 record.

23 MR. BOREANAZ:

24 Your Honor, I am disturbed by one
25 factor. Over the luncheon recess, I went
to my file with respect to this case, as

1 it then existed back in '72 at the time
2 the plea was entered and this defendant
3 was sentenced and in going through the
4 materials that the Board relied upon
5 and that have been presented here in
6 Court, I find some significant lapses
7 of information. Fortunately, I have
8 copies of these materials. On July 3rd
9 of 1972, I wrote Judge Henderson a letter
10 in which I enclosed copies of the defend-
11 ant's income tax returns for the years
12 '68, '69, and '70. I enclosed a copy
13 of a medical report from a doctor with
14 respect to his physical condition at that
15 time and enclosed eight letters of
16 recommendation with respect to his
17 background and his prior life and the
18 cover letter says "Dear Judge Henderson:
19 Enclosed please find the following
20 materials which I respectfully request
21 you consider as part of the presentence
22 investigation regarding my client above
23 captioned in connection with his pending
24 sentence before you". In going through
25 the parole materials which your Honor

1 has before you, none of that material
2 is, in any way, included. I have copies
3 of most of those materials and I would
4 like to make those part of this record
5 because I think it is a distorted picture.

6 THE COURT:

Mr. O'Keefe, was any of this materi-
7 al sent to the Parole Board?

8 MR. O'KEEFE:

Your Honor, this is the first time
9 I have ever heard that Mr. Boreanaz sent
10 the letter or that he enclosed letters.
11 Whether or not Judge Henderson just
12 took these into his own consideration or
13 whether he gave them to the probation
14 people, I don't know.

15 MR. BOREANAZ:

I sent them directly to him, your
16 Honor.

17 MR. O'KEEFE:

I have no objection to them going
18 in evidence.

19 THE COURT:

All right. We will receive what-
20 ever is there.

21 MR. BOREANAZ:

All right. Also, your Honor, from
22 a review of my file and in connection
23 with the issue, if there be one, that
24 relates to this electronic surveillance
25 that is behind this matter, the threshold,

1 and again I think this deals with the
2 question of the level of severity,
3 simply in an effort to advise the Court
4 that there was a good deal of give and
5 take in connection with the plea as
6 ultimately is reflected in the Rule 11
7 compliance, to the point that we ulti-
8 mately entered the plea for Judge
9 Henderson, the historical sequence of
10 which was that I had moved for an order
11 directing disclosure of these materials
12 and in response to an ultimate order
13 that was entered by Judge Henderson, I
14 was provided with a copy of the original .
15 authorization for the intercepts, the
16 electronic surveillance here which
17 clearly show, and I have these materials
18 here, that the original authorization
19 was authorized by Will Wilson, and the
20 stature of that intercept directly falls
21 within the purview of subsequently
22 decided cases which would seem to
23 indicate that the authorization was
24 without merit and that the tap and the
25 tap information would have failed. It

1 is not that the defendant is trying to
2 have his cake and eat it too. We are
3 trying to prevent the Government from
4 having their cake and eating it too and
5 I consider that whole issue a dead issue
6 on both sides. I don't see how you can
7 have protracted negotiations for a plea.
8 At one point in time, your Honor, the
9 Government filed a notice here. I would
10 like to mark this, May 17, 1972,
11 "Enclosed, please find a copy of the
12 Government's motion filed in this matter
13 with the Court", and here's what the
14 Government's motion is, motion to set a
15 trial date over the signature of
16 C. Donald O'Connor, Acting United States
17 Attorney, and here was the basis for
18 the motion, the United States of
19 America has, for some time, been negotiat-
20 ing in good faith with Harold J.
21 Boreanaz, attorney for the defendant
22 Albert Billiteri and with Salten Rodenberg,
23 attorney for Pasquale Napoli, relative to
24 disposition of the case. While it
25 appeared for a time that these negotiations

1 would save the Government the expense
2 of a trial and would also satisfy the
3 defendants, these negotiations have
4 now reached an impasse, wherefore,
5 because there is no longer any common
6 basis for further negotiations and so
7 forth, they then seek the setting of a
8 trial date. That was all occurring,
9 your Honor, during a period of time when
10 we had before Judge Henderson the issue
11 as to whether he would accept the plea
12 and here is a copy of another letter
13 which I wrote Judge Henderson on May
14 10, 1972 and you will notice that
15 precedes the date of the Government's
16 motion to set trial wherein the Judge
17 had asked me to write him a letter with
18 respect to why I thought the case should
19 plea and I set forth in this letter the
20 reasons why I thought the case should
21 plea, pointing out that the Government
22 was relying on the testimony of a witness
23 who they claim had perjured himself, one
24 Spaziano and so forth and so on, point-
25 ing out to the Court that I felt very

1 strongly that there was a reasonable
2 probability of acquittal if the case
3 went to trial and then if your Honor
4 reads very carefully the Rule 11
5 compliance, you will note I was very
6 cautious to have my client concede only
7 that aspect of the issue which dealt
8 with the very limited aspect of the
9 first count of the indictment and your
10 Honor is familiar with Judge Henderson's
11 practices and procedures in compliance
12 with Rule 11 as they then existed and
13 you know it was his normal practice to
14 make a defendant concede the entirety of
15 the indictment.

16 THE COURT:

In the ordinary case, he never
would have permitted it. He would have
had, - certainly required a much more
explicit statement from a defendant.

17
18
19
20 MR. O'KEEFE:

Your Honor, if I might add a little
something here, there were actually
three cases involved. There was this
case in Federal court. I believe there
was a receiving stolen goods case in the
County Court which he pled to and got a

1 concurrent sentence and I believe there
2 was another case which was menacing,
3 something along that line.

4 MR. BOREANAZ:

While we are at that issue - -

5 MR. O'KEEFE:

What was the other case?

6 MR. BOREANAZ:

7 Both cases in Federal Court and
8 State Court, rather, dealt explicitly
9 with the subjects about which you heard
10 testimony from Mr. Parness here today.
11 One was a charge of criminally receiving
12 stolen property. Two, there was a
13 charge of beating up on Parness and
14 making him give over the thousand
15 dollars, exactly what he has testified
16 to here today as a part of our plea
17 negotiation here in Federal Court and
18 as a part of coincident plea negotiation
19 at the State level at the same time.
20 Mr. Billiteri was allowed to plead
21 guilty to that charge in State Court
22 which dealt with the question of crim-
23 inally receiving stolen property. The
24 other indictment against him was dis-
25 missed and was deemed satisfied by the
Court in light of his plea to the one

1 that I have just recited and Mr. O'Keefe
2 was exactly right. This was all part
3 of the same parcel because Mr. Billiteri
4 at that point faced three indictments,
5 two in the State Court and one in
6 Federal Court and it was the considered
7 opinion of Mr. Cleary who was then
8 handling those matters in the District
9 Attorney's office, Mr. O'Keefe on behalf
10 of the Government and myself on behalf
11 of Mr. Billiteri that there was no way
12 we could face the reasonable prospect
13 of three trials when he had already just
14 finished one Federal trial wherein he
15 had been acquitted. The practical
16 prospect of four successive acquittals
17 with all the attendant publicity that
18 would have been engendered as a result
19 of four trials was such that it was deemed
20 to be the best interest of everybody
21 concerned that he plead and receive a
22 five year sentence under the conspiracy
23 here. That is the historical background
24 of what occurred.

25 THE COURT:

Let us do this on the wiretap.

1 After we finish today, I am going to
2 ask you to submit written briefs.
3 You submit written briefs arguing why
4 I ought to consider it and you, Mr.
5 Abramowitz or Mr. Boreanaz do the same.

6 MR. BOREANAZ:

7 I would like to have as part of
8 this record here the materials that I
9 have just alluded to in my letter to
10 Judge Henderson, the letters of
11 recommendation that were submitted on
12 behalf of the defendant and the other
13 materials I have just alluded to, your
14 Honor, and then we would have no addi-
15 tional proof to offer other than that.

16 THE COURT:

All right.

17 MR. O'KEEFE:

18 Your Honor, I just want to make one
19 other point to keep the record perfectly
20 clean. Part of the Government's plea
21 negotiations with Mr. Boreanaz and Mr.
22 Rodenberg was that both parties had to
23 plead and Mr. Napoli, at points, was
24 ready to plead and then he wasn't and
25 so that was also consideration and that
I think completes the whole thing.

MR. BOREANAZ:

Yes, I agree with that statement.

1 There was a delay in acceptance of the
2 plea on behalf of Mr. Billiteri because
3 at a point Mr. Napoli agreed to plead
4 here and then he said he wouldn't plead
5 and then ultimately he did plead.

6 THE COURT:

Very well. Do you have some other
7 documents to go into evidence?

8 MR. BOREANAZ:

Yes. I have all the documents here,
9 your Honor, that I have just alluded to
10 and I would like to have those marked.

11 THE COURT:

Mark those, please, Mr. White, and
12 then could you make some kind of a list-
13 ing of them and we will make it part of
14 the record. Is there some other material?
15 I think the best thing to do here, I
16 don't want to delay this. I have tried
17 to keep it going as swiftly as I can,
18 set a hearing, but it is a most diffi-
19 cult area of the law. It is an area
20 where I think it is most important that
21 we get some standards. I want to do
22 it quickly, but I think I ought to try
23 to do it as fairly as I can. We know,
24 for example, we have had some talk here
25 about things like the "OC" or organized

1 crime designation in the Board of
2 Parole and in a prior case, decided by
3 Judge Zampano in Connecticut, Masiello
4 against Norton, 367 F.Supp 1133, at that
5 time Judge Zampano's comment upon the
6 definition of organized crime, he stated
7 that the Board must establish that
8 quote, "The Board have a reasonable
9 basis, in fact, to conclude that the
10 inmate was a prominent figure in a
11 structured criminal syndicate composed
12 of professional criminals who primarily
13 rely on unlawful activity as a way of
14 life". From your brief, Mr. O'Keefe,
15 it appeared to me that you adopted that.

16 MR. O'KEEFE:

Yes, I did, your Honor.

17 THE COURT:

Definition of Judge Zampano and
18 that you don't quarrel with it and you
19 use that as the basis or standard for
20 this Court to decide this particular
21 matter.

22 MR. O'KEEFE:

Yes, your Honor. I can argue
23 from the evidence here today.

24 THE COURT:

What I would like to know, first
25 of all, Mr. Boreanaz, I would like to

1 get your written notions about number
2 one, whether you agree with Judge
3 Zampano's definition or you disagree,
4 and if you disagree, why and what other
5 definition would be better to use since
6 evidently, you have to have some kind
7 of a definition.

8 MR. ABRAMOWITZ:

Your Honor, I think our position
9 is that in the first place, there should
10 be no such designation and in the second
11 place, though, if there is going to be
12 such a designation, I think that would
13 be an adequate standard.

14 THE COURT:

If you think that there should not
15 be any that may be a good point, a good
16 place to begin; that your argument is
17 that there shouldn't be any difference
18 at all and that each case should be
19 decided without any designation.

20 MR. ABRAMOWITZ:

That is correct.

21 THE COURT:

And if that is the case, Mr. O'Keefe,
22 please address yourself to that argument.

23 MR. O'KEEFE:

All right, your Honor.

24 THE COURT:

That Mr. Abramowitz tells us he
25 is going to make.

1 MR. O'KEEFE:

All right, your Honor.

2 THE COURT:

3 And if we do use that as a defini-
4 tion, if the facts which we have heard
5 here in this particular hearing come up
6 to the standard. I think that during
7 the course of this hearing, you have
8 some of the ideas that I feel. You
9 know, these terms "Mafia, LCN", I guess, -
10 what is it, "made man", made man, what-
11 ever, that these kind of terms are
12 talked about, but I don't know whether
13 they mean anything and frankly, I don't
14 think that I should, when you say about
15 reasonable basis in fact, the fact that
16 you call somebody a member of an
17 organization, I don't know whether that
18 makes it so and I don't know how that
19 helps us, so at least that is a starting
20 point. I think we have to determine
21 what a man is by what he does or by what
22 he says, not by what he is called and
23 if you have a different viewpoint, Mr.
24 O'Keefe, I think you should tell me so.

25 We also get up to the other problem
is the severity designation. What can

1 the Board consider in determining this.
2 Here we have all the questions in this
3 particular hearing about the grand jury
4 testimony, the way the plea was offered,
5 the factual statement made, whether all
6 those things can be or ought to be con-
7 sidered; the circumstances of the offer-
8 ing of the plea and all of the other
9 material. Any ideas you have along
10 those lines certainly would be helpful
11 to me to determine what we ought to do
12 along that line. For example, if you
13 had a trial of this particular proceed-
14 ing and then after trial Mr. Billiteri
15 had been found not guilty of the
16 substantive count, but found guilty of
17 conspiracy. Now, could they then put
18 him in the most severe offense category.
19 It seems to me that there would be a
20 good argument that if the jury had said
21 "no" that the Board of Parole, the
22 Parole Board ought to say "no" too,
23 but maybe you have arguments the other
24 way.

25 MR. O'KEEFE:

Well, your Honor, I think that

1 by regulation and I have cited this other
2 case to you under high severity which is
3 Luppo v. Norton, I believe that it says
4 that the Board may consider the alleged
5 crime as opposed to just considering what
6 the plea was to, and I think that the - -

7 THE COURT:

You see, then by simply filing
8 the indictment, you could put a fellow
9 right into the most severe.

10 MR. O'KEEFE:

Your Honor, I think also when the
11 Board is looking at something like this,
12 it has got to consider its past record
13 and as to whether that record would tend
14 to support that, in fact, this took
15 place. It has got to consider any and
16 all materials which might be brought
17 before the Board.

18 THE COURT:

I talked to Mr. Knisley and he is
19 going to prepare the transcript of the
20 hearing we had and discussion as soon
21 as possible and after you receive that,
22 how long do you think it would take you
23 to get a written statement to me?

24 MR. O'KEEFE:

I would think perhaps ten days to
25 two weeks, your Honor.

1 THE COURT:

Mr. Abramowitz?

2 MR. ABRAMOWITZ:

Probably the same, your Honor.

3 THE COURT:

Why don't we leave it that way.

4 I will send a notice to you as I usually
5 do.

6 MR. ABRAMOWITZ:

7 Your Honor, I would like to raise,
8 at this time again, the motion which I
9 filed earlier concerning bail pending
10 determination of the instant motion
11 before the Court. This is a situation,
12 your Honor, where every, and it is
13 certainly not the Court's fault because
14 it is a complex area, and frankly, I
15 am trying to be generous to the opposi-
16 tion, but frankly, I think the Parole
17 Board here has been at fault as indi-
18 cated by the decisions of this Court.
19 Every day that the decision does not
20 come forth from this Court as a result
21 of the necessity to remand before the
22 Board essentially, Mr. Billiteri is one
23 day further into his sentence which is
24 irrevocable and I would ask that this
25 Court release the defendant on bail
to his detainer where it is a concurrent

1 charge and that could be determined
2 at a later time, your Honor, by a State
3 Judge, and I would ask that this Court
4 do that and in that, your Honor, this
5 is really in the nature of a habeas
6 proceeding.

7 THE COURT:

I don't think, under the rules,
8 Mr. Abramowitz and what I have here
9 before me, that I have the right to do
10 that at this time, but I will consider
11 it as part of the application made here
12 and as part of the material which you
13 ought to address in your written brief.

14 MR. ABRAMOWITZ:

Thank you, your Honor.

15 MR. O'KEEFE:

Thank you, your Honor.

16 THE COURT:

We will be in recess.

17
18 (Plaintiff-Petitioner Exhibits
19 numbered 1 through 14, inclusive, marked
20 for identification.)
21

22 (Recess taken at 3:05 p.m.)

23 I hereby certify that this is a
24 true and accurate transcript from the
25 stenographic notes in this proceeding.

E. F. Knisley
Official Reporter
U.S. District Court

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF NEW YORK
4

5 THE UNITED STATES OF AMERICA

6 -vs-

Cr. 1970-197

7 ALBERT M. BILLITERI, and
8 PASQUALE NAPOLI,

9 Defendants.
10

11 Proceedings held in the above entitled action
12 before the HON. JOHN O. HENDERSON, United States District
13 Judge, in and for the Western District of New York, on
14 May 24, 1972, at Buffalo, New York.
15

16 APPEARANCES: DENNIS O'KEEFE, ESQ.,
17 Department of Justice,
18 Appearing on behalf of the Government.

19 HAROLD J. BOREANAZ, ESQ.,
20 Appearing on behalf of the defendant
21 Albert M. Billiteri.

22 SALTON RODENBERG, ESQ.,
23 Appearing on behalf of the defendant
24 Pasquale Napoli.
25

26 * * * * *
27

1 THE COURT: Good morning.
2 MR. BOREANAZ: Good morning, your Honor.
3 MR. O'KEEFE: Good morning, your Honor.
4 THE COURT: You represent which defendant here,
5 Mr. Rodenberg?
6 MR. RODENBERG: Mr. Napoli, sir.
7 THE COURT: Mr. Napoli.
8 MR. BOREANAZ: I represent Mr. Billiteri, your Honor.
9 THE COURT: Do you have a copy of the indictment
10 here?
11 MR. O'KEEFE: Yes, your Honor, I do.
12 MR. BOREANAZ: I have a copy, your Honor.
13 THE COURT: You may want to use it.
14 MR. BOREANAZ: I have another copy.
15 THE COURT: All right, Mr. O'Keefe, you can state
16 the purpose for our presence here today,
17 and make any comment you want to.
18 MR. O'KEEFE: All right, your Honor. It is my under-
19 standing, your Honor, that the defendants
20 here, Albert Billiteri and Pasquale
21 Napoli, intend to plead guilty to the
22 first count of this indictment, that is,
23 a conspiracy count. That count charges
24 the defendants with conspiring to violate
25 the Extortionate Credit Act, that is,
26 Title 18, United States Code, Section
27 892, in that they are accused -- which

1 states that it shall be a crime to make
2 extortionate extensions of credit. That
3 is defined in the Act as extensions of
4 credit with respect to which it is the
5 understanding of the creditor and debtor
6 at the time that it is made, that delay
7 in making repayment or failure to make
8 repayment could result in the use of
9 violence or other criminal means to cause
10 harm to the person, reputation or pro-
11 perty of any person. They are further
12 charged with conspiring to violate
13 18 United States Code, 894, which makes
14 it a crime to collect extortionate
15 extensions of credit. It is the Govern-
16 ment's position that Count I is brought
17 under 18 United States Code, 371, and
18 this particular law carries a penalty
19 of five years in prison or \$10,000 or
20 both.

21 THE COURT: Is that your understanding, gentlemen?
22 Is that your's, Mr. Rodenberg?

23 MR. RODENBERG: This is my understanding of what the
24 defendant Napoli offers to plead to, sir.

25 THE COURT: You, Mr. Boreanaz?

26 MR. BOREANAZ: Your Honor, I want to make it clear
27 that it is our understanding that we are

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pleading, or offering, I should say,
to plead to a violation of Section 371
of Title 18. The alleged substantive
act that we are accused of violating
would be Title 18, either 392 or 394.

THE COURT: Yes. Is that your understanding, Mr.
O'Keefe?

MR. O'KEEFE: Yes, your Honor.

THE COURT: If this plea is accepted, this carries
a maximum penalty of five years and a
\$10,000 fine, is that your understand-
ing, gentlemen?

MR. BOREANAZ: Yes, your Honor.

MR. RODENBERG: Yes, your Honor.

THE COURT: I want to address you, Mr. Billiteri.
Mr. Boreanaz and you have talked this
over thoroughly, have you?

MR. BILLITERI: Yes, we have.

THE COURT: You have heard the prosecutor speak and
your lawyer speak, do you understand
everything about that--

MR. BILLITERI: Yes, sir.

THE COURT: -- subject matter?

MR. BILLITERI: Yes.

THE COURT: I want to be absolutely satisfied that
you are thoughtfully and understandingly
making an offer of this plea, and that

1 there will be question, if the plea
2 is accepted, but what you voluntarily
3 and understandingly make it. If you
4 have any questions, now is the time to
5 ask them, you see.

6 MR. BILLITERI: Yes.

7 THE COURT: Do you have any at all?

8 MR. BILLITERI: Not at this time, no, sir.

9 THE COURT: Mr. Napoli?

10 MR. NAPOLI: Yes, sir.

11 THE COURT: You have heard Mr. Rodenberg respond to
12 my question, and do you understand
13 exactly what you are doing here?

14 MR. NAPOLI: Yes, your Honor.

15 THE COURT: You are pleading to a conspiracy, of a
16 particular section of the United States
17 Code, wherein the maximum penalty is a
18 term of five years imprisonment and a
19 \$10,000 fine, do you understand that?

20 MR. NAPOLI: Yes.

21 THE COURT: All right. Now, are you prepared to
22 make a statement, Mr. O'Keefe, as to what
23 your expected proof would be if this
24 Count I were to go to trial before a
25 jury?

26 MR. O'KEEFE: Yes, your Honor, I am. The Government
27 has three witnesses, your Honor. The

1 first witness, Bernard Spaziani, would
2 testify that in the spring of 1968 he
3 asked one Joseph LaPorta for a loan of
4 money. LaPorta said that he did not
5 have the money but that he would get it
6 for him. LaPorta later came back with
7 \$500 and told Mr. Spaziani that he must
8 repay \$700 at the end of thirty days.
9 In the fall of 1968 Spaziani again wanted
10 some money and he asked LaPorta for a
11 loan. LaPorta said that he did not have
12 the money but that he would arrange it
13 for him. He then put Mr. Spaziani in
14 touch with Pasquale Napoli. The three
15 of them then met at the Arab Social Club
16 on Hudson Street. Pasquale Napoli, in
17 the presence of Bernard Spaziani, received
18 an okay from Mr. Billiteri. Mr. Billiteri
19 said, 'All right, lend him the money.'
20 They gave Mr. Spaziani \$500, and the
21 terms were the same, they were to repay
22 \$700 at the end of thirty days. Spaziani
23 was unable to repay this money at the
24 end of thirty days, and at that time they
25 contacted him and gave him two more days
26 to repay it. Four days later they drove
27 up in front of Mr. Spaziani's barber

1 shop, they inv ed him into their car,
2 and Mr. Napoli, in the presence of
3 Mr. Billiteri, slapped Mr. Spaziani six
4 or seven times in the fact^e, and threaten-
5 ed him for not repaying this money. Mr.
6 Spaziani then borrowed the money from
7 friends of his and repaid it that day.
8 Mr. LaPorta would testify that in the
9 spring of 1968, Mr. Spaziani came to
10 him and asked him for a loan of money.
11 He then went to Mr. Napoli and Mr. Bill-
12 iteri and obtained \$500. He took that
13 \$500 to Mr. Spaziani and told him that he
14 would have to repay \$700 at the end of
15 thirty days. In the fall of 1968, Mr.
16 Spaziani again approached Mr. LaPorta
17 and he said he didn't have any money.
18 Mr. LaPorta would testify that he then
19 arranged a meeting at the Arab Social
20 Club on Hudson Street between Pasquale
21 Napoli, Albert Billiteri and Bernie
22 Spaziani, and at that time Pasquale
23 Napoli received an okay from Mr.
24 Billiteri, and he gave \$500 to Mr.
25 Spaziani and told him to repay \$700 at
26 the end of thirty days. In December of
27 1968, a friend of Mr. LaPorta, one

1 Donald Tonhaus approached him for a
2 loan. Mr. LaPorta sent Mr. Tonhaus
3 next door to Spaziani's barber shop,
4 where Spaziani gave him a phone number.
5 Mr. Tonhaus returned to Mr. LaPorta's
6 office and called this number. A few
7 moments later Mr. Tonhaus turned over the
8 phone to Mr. LaPorta, and on the phone
9 was Albert Billiteri. Mr. Billiteri
10 asked Mr. LaPorta to vouch for Mr.
11 Tonhaus, and Mr. LaPorta did vouch for
12 him. Mr. LaPorta and Mr. Tonhaus then
13 went to the Arab Social Club on Hudson
14 Street where they met Mr. Napoli. Mr.
15 Napoli gave \$200 to Mr. LaPorta and told
16 him he must repay \$240 at the end of
17 three weeks. Mr. Tonhaus didn't repay this
18 money. On the 23rd of June 1969, Albert
19 Billiteri called Mr. LaPorta and told
20 him to meet him at the Town House Motel
21 at eleven-thirty a.m. that day. They
22 met and Eabe -- Albert Billiteri began
23 calling LaPorta obscene names, poked his
24 fingers in his eye, threatened him for
25 not repaying the money, took his wallet
26 away from him and took what money he had,
27 and threatened him that something would

1 happen to him -- he didn't repay this
2 money. LaPorta then obtained the
3 money and repaid them. Mr. Tonhaus'
4 testimony would be the same as that of
5 Mr. LaPorta, with the exception of the
6 fact that he remembers the loan as \$600,
7 not \$200. That would be the Government's
8 proof in this case, your Honor.

9 THE COURT:

10 Now, Mr. Boreanaz, I have not been
11 in on any conferences that you have
12 had here with the District Attorney,
13 and it is only indirectly that I have
14 been advised that you intend to plead
15 guilty to Count I, a violation of
16 Section 371 of Title 18, alleging
17 this conspiracy, but that you had some
18 reservations about having your client
19 admit participation beyond the need to
20 support a solid plea -- by 'a solid plea'
21 I mean a plea that will stand under
22 any subsequent attack -- to Section 371.
23 Your concern is that there are more
24 serious matters of maybe collateral
25 concerns elsewhere, in other courts
26 perhaps, wherein you would be concerned
27 about admitting here facts beyond the
facts needed to support the conspiracy

1 count, Count I

2 MR. BOREANAZ: That is correct, your Honor.

3 THE COURT: Now, both of you lawyers are aware of
4 my purpose here. I want to take a plea
5 under Criminal Rule 11 of the Rules of
6 Criminal Procedure which will be a solid
7 plea in the judgment of this Court and
8 the lawyers, both for the Government and
9 the defendants, which cannot be disturbed
10 by subsequent application to this Court
11 or another court for lack of compliance
12 with Rule 11. You understand that, each
13 of you?

14 MR. BOREANAZ: Yes, your Honor.

15 MR. RODENBERG: Yes, your Honor.

16 THE COURT: What is your client willing to admit, by
17 way of overt acts and the criminal
18 conspiracy, wherein I would find support
19 to accept a plea to Count I?

20 MR. BOREANAZ: Your Honor, for the sole purpose of
21 complying with Rule 11, my client is
22 prepared to admit --

23 THE COURT: Excuse me. I want you to listen care-
24 fully. I am going to ask you whether
25 you listened carefully and whether you
26 do admit these facts.

27 MR. BILLITERI: Yes.

1 MR. BOF ANAZ: For the sole purpose of complying with
2 Rule 11, my client is prepared to admit
3 that within the time period set forth
4 in the first count of the indictment
5 that he and the co-defendant, here now
6 before your Honor, conspired and agreed
7 to violate the substantive section set
8 forth within that count, and that an
9 overt act in furtherance of that criminal
10 conspiracy was performed, to wit, Overt
11 Act 3 of the indictment, that on or about
12 June 23, 1969, my client made a phone
13 call to Joseph LaPorta.

14 THE COURT: Now, I think I am going to have to have
15 some further admission as to the nature
16 and import of that call.

17 MR. BOREANAZ: That call was in furtherance of the
18 criminal conspiracy, your Honor, he
19 would admit.

20 THE COURT: In other words, in furtherance of the
21 conspiracy to make these loans to one
22 or more persons at exorbitant rates of
23 interest, is that correct?

24 MR. BOREANAZ: That is correct, your Honor.

25 THE COURT: Mr. Billiteri, you have heard what Mr.
26 lawyer said. Did you make that call?

27 MR. BILLITERI: Yes, your Honor.

1 THE COURT: Was it for the purpose that Mr.
2 Boreanaz just outlined?

3 MR. BILLITERI: Yes, your Honor.

4 THE COURT: All right. Now, Mr. Rodenberg, I have
5 the same concern with respect to your
6 client. You remember what I said to
7 Mr. Boreanaz about the purpose, and I
8 want to know what your client will admit
9 here, so that I am satisfied that indeed
10 there is a violation of Section 371, and
11 that he is guilty of that crime.

12 MR. RODENBERG: Your Honor, our position is this. That
13 Mr. Napoli admits that portion of the
14 recitation by the United States Attorney
15 which indicates that some time in the
16 summer of 1968, he and Mr. Billiteri did
17 agree and did loan a sum of some hundreds
18 of dollars, given to Mr. Spaziani, as
19 alleged in the overt act, and that there
20 was an understanding, implied at least,
21 that there would be a distinct possibility
22 of force if the loan wasn't repaid. This
23 is all we admit. As far as any of the
24 substantive aspects are concerned, your
25 Honor pointed out Monday that because
26 it was not within the context of the
27 count to which we plead, that your Honor

1 requires no admissions or no statements,
2 insofar as that is concerned. I am
3 making specific reference to the fact
4 that we would not agree that my client
5 struck this man some six or seven times
6 or did anything else in furtherance
7 thereof, because I don't think it is
8 required within the purview of Count I.
9 We do admit the conspiracy, we do admit
10 the overt act of turning money over, as
11 indicated by the United States Attorney,
12 and we do agree that the recipient of
13 the money understood that force might be
14 used if the money weren't forthcoming.

15 THE COURT:

Now, Mr. Napoli, you have heard Mr.
16 Rodenberg speak about certain facts, on
17 your behalf, that he offers as an
18 admission by you in making this plea to
19 Count I. Do you agree with everything
20 he said?

21 MR. NAPOLI:

Yes, your Honor.

22 THE COURT:

And you endorse and accept his words
23 as admissions, for the purpose of this
24 plea, as to your actions in this case,
25 right?

26 MR. NAPOLI:

Yes, your Honor.

27 THE COURT:

Mr. O'Keefe, you have heard both the

1 lawyers and the defendants admit the
2 involvement necessary to support this
3 plea to Count I.

4 MR. O'KEEFE: Yes.

5 THE COURT: Is it your feeling that indeed the
6 admissions would constitute, if the
7 plea is accepted, a plea of guilty to
8 Count I?

9 MR. O'KEEFE: Yes, your Honor.

10 THE COURT: And that the admissions would support
11 a finding of guilty by a jury of Count
12 I?

13 MR. O'KEEFE: Yes, your Honor.

14 THE COURT: You gentlemen both understand, Mr.
15 Billiteri and Mr. Napoli, that the
16 punishment that may result from this
17 plea, if it is accepted, is solely within
18 the discretion of myself, as the Court
19 here, do you understand that?

20 MR. BILLITERI: Yes.

21 MR. NAPOLI: Yes.

22 THE COURT: That, of course, at the time of sentence
23 I will listen to anything either one of
24 you want to say or both want to say, and,
25 of course, to Mr. Boreanaz and to Mr.
26 Rodenberg, speaking on your behalf, but
27 that indeed the matter of punishment

1 rests with me one, do you both under-
2 stand that?

3 MR. BILLITERI: Yes.

4 MR. NAPOLI: Yes.

5 THE COURT: You both have in mind that if this plea
6 is accepted, the maximum punishment that
7 may be imposed would be five years and
8 a fine of \$10,000, you both understand
9 that?

10 MR. BILLITERI: Yes.

11 MR. NAPOLI: Yes.

12 THE COURT: I want to ask you a couple of questions
13 before we consider accepting this plea.
14 I want you to understand that before
15 accepting the plea, I must be satisfied
16 that you are acting voluntarily, that
17 you each understand your rights -- I
18 particularly have in mind your right to
19 stand trial, if you chose to do so, under
20 the whole indictment -- that you fully
21 understand the consequences of your plea,
22 and, of course, I am interested in the
23 fact that you are pleading guilty because
24 you are in fact guilty. Now, gentlemen,
25 if you were to go to trial here on the
26 indictment, I want you to understand that
27 you would be entitled to go to trial

1 before a jury, t a speedy time, do
2 you understand that?

3 MR. BILLITERI: Yes.

4 MR. NAPOLI: Yes.

5 THE COURT: And that at such a trial, if it were to
6 take place, the Government would have to
7 confront you with witnesses upon whose
8 testimony it relied to obtain a con-
9 viction, and that each of you would
10 have the right to cross examine the
11 witnesses to test the truth of what
12 they are saying against you, you under-
13 stand that, each of you?

14 MR. BILLITERI: Yes.

15 MR. NAPOLI: Yes.

16 THE COURT: And at such a trial each of you would
17 be presumed to be innocent until such
18 time, if ever, as the Government estab-
19 lishes your guilt, separately, by com-
20 petent evidence, to the satisfaction of
21 the jury, beyond a reasonable doubt.
22 Do you understand that would be your
23 right to stand trial?

24 MR. BILLITERI: Yes.

25 MR. NAPOLI: Yes.

26 THE COURT: And that at such trial you would be
27 entitled to use compulsory process

1 Billiteri?

2 MR. BILLITERI: No. The only thing that has been
3 explained to me is the maximum sentence
4 possible.

5 THE COURT: You, Mr. Napoli, you don't have any
6 understanding that anybody has given
7 you as to what I will impose by way of
8 sentence?

9 MR. NAPOLI: No.

10 THE COURT: Do you believe or has there been any
11 prediction made to you as to the sentence
12 that is likely to be given to you here?

13 You, Mr. Billiteri?

14 MR. BILLITERI: No, your Honor.

15 THE COURT: You, Mr. Napoli?

16 MR. NAPOLI: No, your Honor.

17 THE COURT: Now, there is one concern I have here.
18 It may be that the acts herein stated
19 in Count I might constitute an offense
20 under state laws -- I am thinking of the
21 lawyers now; you, Mr. Boreanaz, and you,
22 Mr. Rodenberg -- wherein this felony, a
23 plea to this felony, might possible be
24 considered a felony under state laws,
25 and if either Mr. Billiteri or Mr.
26 Napoli became involved with the law at
27 state level at a subsequent time, that

1 this felony to which they plead today
2 might be considered an offense under state
3 laws, whereby greater mandatory punishment
4 might be required of such a state judge
5 than had this felony not been pleaded
6 to today. Have you talked to them
7 about that?

8 MR. BOREANAZ: Yes, your Honor.

9 THE COURT: What have you said to him?

10 MR. BOREANAZ: Your Honor, it would be my belief, on
11 the basis of the admissions of fact
12 that we have had here today, that the
13 violation to which we plead could not
14 be construed as a state felony.

15 THE COURT: I am not trying to make a construction
16 of that, but I want them to understand
17 that this is a federal felony, and that
18 it might possibly be interpreted, if
19 you got into difficulty at a subsequent
20 time in the State of New York and were
21 charged with a felony, today's plea
22 might constitute an offense whereby
23 you would be a second felony offender
24 at that state level, and, as such, the
25 court at a subsequent time at the state
26 level might be required to impose greater
27 mandatory punishment upon you than he

1 would have imposed if you had not been
2 convicted today, if this plea is accepted,
3 of this federal felony, do you under-
4 stand what?

5 MR. BILLITERI: Yes.

6 THE COURT: You know what a two time loser is. In
7 other words, if you are convicted of
8 certain felonies in the State of New
9 York, each time you are convicted of
10 a felony we have this mandatory punish-
11 ment law in this state, wherein greater
12 punishment is mandated, and the judge
13 has no discretion over it. Do you
14 understand what I am talking about?

15 MR. BILLITERI: Yes.

16 THE COURT: You, Napoli?

17 MR. NAPOLI: Yes.

18 THE COURT: In other words, I don't say that this
19 will constitute a felony within the
20 purview of the New York State multiple
21 offender law, but it could do such. I
22 want you to understand the importance
23 of that, and that you don't take this
24 plea lightly, because if you got in
25 trouble again at the state level you
26 might run into this problem of being
27 at least a second felony offender at the

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state level. Mr. Boreanaz says, he is not convinced, he thinks otherwise. It is not my job to determine whether it is a felony under the State of New York for the purpose of multiple offender laws, I simply bring it to your attention. You are both aware of that possibility?

MR. BILLITERI: Yes, your Honor.

MR. NAPOLI: Yes, your Honor.

THE COURT: Now, Mr. Boreanaz, I will ask you -- you know my purpose here is to get a solid plea, which cannot be disturbed because perhaps the defendants are disappointed in the sentence or for some other reason -- I am trying to completely comply with Rule 11 of the Rules of Criminal Procedure of this Court. Do you think we have done so?

MR. BOREANAZ: I do, your Honor. I might add that my client and I have discussed this at great length. My client, in my judgment, is fully aware of all of the potential consequences, insofar as they relate to the sentence that the Court might impose in connection with this matter, that no promises of any kind have been made to

1 him in that regard. I feel, your Honor,
2 that my client pleads guilty to this
3 count of the indictment, as we framed
4 it before your Honor, because in fact it
5 is to his advantage to so plead. I
6 believe he understands that.

7 THE COURT: Is that your understanding, Mr. Billiteri?

8 MR. BILLITERI: Yes, your Honor.

9 THE COURT: The same question to you, Mr. Rodenberg.
10 I have an interest in trying to comply
11 with Criminal Rule 11, do you have any
12 further suggestions that I should inquire
13 into here from your client or you for
14 full compliance with Criminal Rule 11?

15 MR. RODENBERG: No, your Honor, because Mr. Napoli has
16 agreed that indeed that portion of the
17 statement, as set forth by the United
18 States Attorney, which describes a
19 conspiracy to commit the substantive
20 acts charged, did indeed happen. Your
21 Honor is aware that originally I attempted
22 to dissuade my client from making this
23 plea. Since then he has pointed out to
24 me the same facts, which we have admitted
25 this morning, and in those circumstances,
26 your Honor, it is to our distinct advantage
27 to plead to the conspiracy count.

1 THE COURT: You have no further questions of the
2 concern of this Court as to the volun-
3 tariness and lack of duress of any kind
4 upon the defendants in offering this
5 plea?

6 MR. RODENBERG: None whatsoever, your Honor. I have
7 afforded my client, as you are aware,
8 much opposition before this plea was
9 made. I am now satisfied that the
10 factual situation is such that it is in
11 our best interest to make this plea.

12 THE COURT: Is that your understanding, Mr. Napoli?

13 MR. NAPOLI: Yes, your Honor.

14 THE COURT: Is everything your lawyer said your
15 understanding, with your full consent
16 that he says that?

17 MR. NAPOLI: Yes, your Honor.

18 THE COURT: And I can accept his words as your words
19 over the subject matter which he spoke
20 of?

21 MR. NAPOLI: Yes, your Honor.

22 THE COURT: Mr. O'Keefe, you represent the Govern-
23 ment, and you know the concern of this
24 Court and the Government on these pleas,
25 within the purview of Rule 11, that we
26 want them final, thoughtful and without
27 recourse or disturbance at a subsequent

1 time. Do you think we have fully
2 complied with Criminal Rule 11?
3 MR. O'KEEFE: Yes, your Honor.
4 THE COURT: You have no suggestions for further
5 inquiry of these defendants within the
6 purview of that rule?
7 MR. O'KEEFE: No, your Honor.
8 THE COURT: All right. Now, Mr. Billiteri, what
9 is your plea to Count I of this indict-
10 ment, Criminal 1970-197?
11 MR. BOREANAZ: Your Honor, alleging a violation of
12 Title 18, Section 371. The reason I
13 add that, your Honor, is that there is
14 some question here as to what this
15 count alleges, and I want to be certain
16 that my client is pleading to a violation
17 of Section 371.
18 THE COURT: There is no question, you are pleading
19 to Title 18, United States Code, Section
20 371, that is, the conspiracy to violate
21 certain other laws with respect to loan
22 sharking.
23 MR. BOREANAZ: That violation my client will plead
24 guilty to, your Honor.
25 THE COURT: I want to hear you, Mr. Billiteri. Is
26 that your plea?
27 MR. BILLITERI: Yes, sir.

1 THE COURT: That is the plea carrying a maximum
2 penalty of five years. That should
3 clear the air, Mr. Boreanaz, of any
4 concern.

5 MR. BILLITERI: I plead guilty.

6 THE COURT: You plead guilty. How about you, Mr.
7 Napoli, to the same question?

8 MR. NAPOLI: I plead guilty.

9 THE COURT: Then this Court, feeling that it has
10 complied with Criminal Rule 11, and that
11 the plea has been voluntarily made,
12 accepts that plea and enters an order
13 to that effect, and a finding that the
14 plea is knowingly and voluntarily
15 made, and without duress of any kind,
16 and that the plea has a basis in fact.

17 MR. SCHAEFER: May we have until June 19th, your Honor?
18 That is three weeks from Monday.

19 MR. BOREANAZ: I would like to request June 26th.

20 THE COURT: I have to attend a judicial conference
21 in latter June, I can't think of when it
22 is exactly. Can't we get this out? Have
23 you other plans, Mr. Boreanaz?

24 MR. BOREANAZ: My client's daughter is graduating from
25 school on the 24th. He would like to
26 be present for that. If your Honor wants
27 to take this sentence prior thereto, and

1 at that time I could make a request
2 that the execution of any sentence, if
3 any, that your Honor might impose could
4 be delayed until after the 24th, I
5 would appreciate that.

6 THE COURT: All right. We will fix the time of
7 sentence at ten o'clock on June 19th.

8 MR. BILLITERI: Your Honor, I request that the sentence
9 would be put until after my daughter's
10 graduation --

11 THE COURT: I heard your --

12 MR. BILLITERI: For the simple reason, your Honor, that
13 I would like no publication. I have a
14 very emotional daughter, and I would
15 rather spare her any publicity, adverse
16 as it may be.

17 THE COURT: This is the daughter that is getting
18 married?

19 MR. BILLITERI: No, she is graduating from grammar
20 school. Since my entanglement with the
21 law she has been quite nervous.

22 MR. BOREANAZ: I understand the child is under some
23 form of treatment, your Honor, for mental
24 difficulty, as a result of emotional
25 disturbance, your Honor.

26 THE COURT: Well --

27 MR. BILLITERI: I would certainly appreciate any

consideration.

THE COURT: June 26th, ten o'clock.

MR. BILLITERI: Thank you very much, your Honor.

THE COURT: All right. I hand you back the copy
of the indictment. I guess there is
nothing further. Court is in recess.

* * * * *

I hereby certify that this record is a
true and accurate transcript from my
stenographic notes in this proceeding.

James J. Leach
Official Reporter
U. S. District Court

PROBATION FORM 2a
FEB 65

UNITED STATES DISTRICT COURT
Western District of New York
PRESENTENCE REPORT

3

NAME ALBERT M. "BABE" BILLITERI
a/k/a Al Nigro
ADDRESS 793 Ashland Avenue
Buffalo, New York 14222

DATE June 15, 1972

DOCKET NO. Cr 70-197

OFFENSE CONSPIRACY, EXTORTIONATE
EXTENSIONS OF CREDIT
18 USC 371

LEGAL RESIDENCE

AGE 45 DATE OF BIRTH 7-17-26
Buffalo, New York

PENALTY 5 yrs. a/o \$10,000 fine

SEX Male RACE White

CITIZENSHIP United States

PLEA 5-24-72, Guilty to
Count I.

EDUCATION 8 Grades

VERDICT

MARITAL STATUS Married

CUSTODY \$5,000 surety bond.

DEPENDENTS Two (Wife & daughter)

ASST. U.S. ATTY Dept. of Justice Atty.
Dennis O'Keefe

SOC. SEC. NO. 062-18-6638

DEFENSE COUNSEL Harold Boreanaz
(retained)

FBI NO. 3 985 331

DETAINERS OR CHARGES PENDING Counts 2 thru 5 of Indictment Cr-70-197.

CODEFENDANTS (Disposition) Pasquale Napoli - PG to Count 1, sentence
pending.

DISPOSITION

5 yrs C7C
Fined \$10,000

DATE

7-5-72

SENTENCING JUDGE

Hon. John C. Henderson

RE: ALBERT M. "BABE" BILLITERI

1.

OFFENSE:

A five count Indictment in Cr-70-197, returned on December 9, 1970, charges Albert M. "Babe" Billiteri and Pasquale Napoli, a/k/a Patty Naples, as follows:

Count I - charges the two defendants, between about June 1, 1968 and about July 15, 1969 did unlawfully conspire together and with other unknown people to knowingly, wilfully make extortion extensions of credit (defined in 18 USC 891(6)) and loans wherein the understanding of the defendants and the debtors Bernard Spazianni, Donald A. Tonhaus and Joseph P. LaPorta, that delay in repayment or failure to repay could result in the use of violence and other criminal means as to cause harm to the person, reputation, or property of the aforementioned debtors, in violation of 18 USC 892. Also, in the same period, the defendants did conspire to use extortionate means of any kind against the debtors to collect or attempt to collect extortionate extensions of credit or to punish the debtors for nonpayment of extortionate extensions of credit, in violation of 18 USC 894. In support and furtherance of said conspiracy and objectives of defendants, six overt acts enumerate the joint meeting of the defendants or the single meeting of defendant Billiteri at various locations in the Buffalo area, on July 15, August 19, 1968, June 23, June 28 and July 2, 1969, with debtors Bernard Spazianni and Joseph P. LaPorta; all in violation of 18 USC 371.

Count II - alleges the defendants, as creditors, did make extortionate extension of credit, on July 15, 1961, to Bernard Spazianni, debtor, in the amount of \$500 repayable in 30 days in the amount of \$7000 with the understanding that delay in making repayment or failure to repay could result in use of violence and other criminal means to cause harm to person, reputation,

RE: ALBERT M. "DABE" BILLITERI

2.

OFFENSES: -Cont'd.

or property of debtor or others; all in violation of 18 USC 892 and 2.

Count III - alleges the defendant, on August 19, 1968, wilfully used extortionate means (18 USC 891(7)) to collect from Bernard Spazianni an extension of credit, did use violence by beating and striking to cause harm to Bernard Spazianni; all in violation of 18 USC 894 and 2.

Count IV - recites and realleges the same violations as set forth in Count II, but, on or about December 15, 1969, as to an extortionate extension of credit to debtors Donald A. Tonhaus and Joseph P. LaPorta in the amount of \$200 repayable in three weeks in the amount of \$240; all in violation of 18 USC 892 & 2.

Count V - alleges this defendant, singly, on or about June 29, 1969, wilfully used extortionate means to collect \$600 from Joseph P. LaPorta by means of violence, namely a slap, accompanied by threatening gestures, to cause harm to said debtor; all in violation of 18 USC 894 and 2.

On November 24, 1969, the two defendants were apprehended, with four others, by FBI Agents acting on U.S. Commissioner arrest warrants issued November 13, 1969. Upon the instant defendant's arraignment before U.S. Commissioner, now U.S. Magistrate, Edmund Maxwell, bail of \$5,000 was set and posted by the Cosmopolitan Mutual Insurance Company. Subsequently, on May 24, 1972, defendants Billiteri and Napoli were arraigned before the Honorable John O. Henderson, Chief U.S. District Judge. With retained counsel present, and after judicious interrogation by the Court, in compliance with Rule 11, both defendants withdrew their prior pleas of not guilty (entered December 14, 1970) and entered new pleas of guilty to

RE: ALBERT M. "RABE" BILLITERI

3.

OFFENSE: -Cont'd.

Count I of the Indictment. Sentencing was deferred to June 26, 1972 to allow for the submission of separate presentence reports on both defendants; they were continued at liberty under their original bonding arrangements. It is also to be noted that at the time of these two defendants' original arrest, Matthew Billiteri and Frank T. Billiteri (respectively brother and son), Samuel Lagattuta and Albino Principe were also arrested on the same U.S. Commissioners arrest warrant, as to complaints charging loan sharking, collecting money at extortionate interest and conspiracy. On October 5, 1971, these latter four individuals were dismissed as to the original criminal complaint.'

Official Version. Department of Justice Attorney Dennis O'Keefe, assigned to the section on Organized Crime, on June 8, 1972, dictated the following synopsis of the pertinent facts underlying the government's case:

PASQUALE NAPOLI
ALBERT "BABE" BILLITERI

4.

OFFENSE: - continued

Official Version. On June 8, 1972, Department of Justice Attorney Dennis O'Keefe submitted the following information:

On June 11, 1969, the Honorable John O. Henderson, U. S. District Judge for the Western District of New York, ordered an oral interception of Billiteri's phone, (335-2073) located in the first floor at 793 Ashland Avenue, Buffalo, New York. A call was intercepted by the FBI on June 12, 1969. A further order to intercept telephone and other oral communication was issued July 11, 1969 and conversations were intercepted during the period July 11-20, 1969. While the original basis for the interceptions was the possibility that Billiteri was violating the Extortion and Credit Act, 18 USC 891 etc., the interceptions revealed a local bookmaking operation being conducted by Albert Billiteri and Ignatius Lococco with occasional references to loan sharking.

On November 12, 1969, a complaint was authorized by the U.S. Attorney and filed before the U.S. Commissioner. Federal warrants were then issued by the Commissioner charging Albert Billiteri, Frank Billiteri, Matthew Billiteri (now deceased), Pasqual Napoli, Samuel Lagatutta, Jr. and Albino Principe with violating 18 USC 892, 894 and 371. All the suspects were arrested by the FBI and appropriate searches under warrants were conducted on Nov. 22, 1969. Some records were recovered; however, it is difficult to determine whether these records reflected loansharking or betting-wagering transactions. Following the arrest, some 30 witnesses were interviewed by the FBI and 60 or more gave testimony before the Grand Jury. Some 10 witnesses had to be immunized. Joseph LaPorta testified before the Grand Jury as follows:

Joseph LaPorta knew that Bernard Spaziani, who had a barber shop next door to LaPorta's place of business at 408

OFFENSE: - continued

Oliver Street, North Tonawanda, was in trouble with Pasquale Napoli, aka Patty Naples and Albert M. "Babe" Billiteri, both of whom LaPorta knew to be loan sharks. Spaziani was in trouble because he was behind in payment of a loan that he had received from these men. In approximately December of 1968, a friend of LaPorta's, one Donald Tonhaus, approached LaPorta for a loan. LaPorta could not loan him any money, but did send him next door to Spaziani's barber shop. Spaziani gave Tonhaus a phone number and Tonhaus then returned to LaPorta's where he placed a call in the presence of LaPorta. Tonhaus talked to someone briefly and then handed the phone to LaPorta. Babe Billiteri was on the line and asked LaPorta to vouch for Tonhaus on a loan. LaPorta said he would vouch for Tonhaus. Then Babe told LaPorta that he would also hold him personally responsible for the loan.

LaPorta and Tonhaus then went to the Arab Club on Hudson Street where they met Patty Naples, not Babe Billiteri. Patty (Naples) Napoli put \$200 in LaPorta's hand while explaining to Tonhaus that he must repay \$240 at the end of three weeks. Sometime later, Napoli called LaPorta about the loan. LaPorta then called Tonhaus and all three were to meet the next day in the Arab Club and talk it over, but on the next day Tonhaus did not show up. Napoli then told LaPorta to get in touch with Babe and talk it over. LaPorta then called Babe at home and told him he couldn't contact Tonhaus. He finally contacted Tonhaus who told LaPorta he would take care of it; however, he did not. In approximately March, 1969, LaPorta was to meet Babe at the Arab Club to further discuss the matter. When he arrived there, only Patty was waiting so he gave Patty \$60 to stall them off. Sometime later, two men came looking for LaPorta at his place of business and also next door at Spaziani's Barber Shop. LaPorta's secretary's description of these men fit Napoli and Billiteri. Babe then called LaPorta and told him to meet him at the Arab Club. LaPorta was frightened and did not go; instead, he called the Club and Patty

PASQUALE LAPORTA
ALBERT "BABE" BILLITERI

OFFENSE: - continued

answered. LaPorta told Patty he could not make it, and Babe then came on the line and told him to get right down to the Club-or else. Again LaPorta went looking for Tonhaus and could not find him. The next day, Babe called LaPorta and told him to meet Babe at the Townhouse Motel at 2:00 PM-or else. This conversation was intercepted by the wire communication and two agents followed Babe to the Town House Motel however, they lost him in a parking lot. LaPorta met Babe who cursed and threatened him and said the debt is now \$600. He also said he held LaPorta personally responsible for this loan. On June 23, 1969, Babe again called LaPorta and told him to meet at the Townhouse Motel at 11:30 AM. They met in a parking lot of the motel and Babe called LaPorta a number of vulgar, obscene names. He then poked two fingers of his right hand in LaPorta's face and said he would poke his f--- eyes out. He finally slapped LaPorta in the face, took his wallet from which he extracted 20-75 dollars and threw the wallet back at LaPorta. One and one-half days later, LaPorta located Tonhaus, threatened Tonhaus and told him it is you or me. Tonhaus then gave LaPorta a check for \$600, which he cashed and gave to Babe Billiteri in the presence of Patty Naples.

Donald Tonhaus testified the same as did LaPorta with the exception that he recalled the original loan as \$600 and not \$200. He also produced a cancelled check made out to LaPorta in the amount of \$600.

Bernard Spaziani testified before the grand jury as follows:

Because of his heavy gambling in the Spring of 1968, Spaziani was heavily in debt. He approached a businessman in the office next to the Barber Shop, one Joseph LaPorta and asked him for a loan. LaPorta did not have the money but said he could get it for Spaziani. He got \$500, gave it to Spaziani

PASQUALE NAPOLI
ALBERT "BABE" BILLITERRI

6a.

OFFENSE: - continued

and told Spaziani that he would have to repay \$700 at the end of 30 days, to which Spaziani agreed. Spaziani repaid this loan. In the Fall of 1968, Spaziani was again in financial difficulty and asked LaForte to get another loan for him. Instead, LaForte arranged for Spaziani to meet Pasquale Napoli at the Arab Club on Hudson Street in Buffalo. Napoli met Spaziani at the Arab Club and having secured Babe Billiterra's OK in Spaziani's presence, Napoli gave Spaziani \$500. He explained to Spaziani that the terms would be the same as those of the earlier loan, that he must repay \$700 at the end of 30 days.

At the end of 30 days, Spaziani was unable to repay the loan. He contacted Billiterra and Napoli and they gave him two additional days to repay the loan. Four days later, Napoli and Babe Billiterra came to Spaziani's Barber Shop and ordered him outside to their automobile to talk over the repayment of the loan. When Spaziani got into the back seat of the car, Napoli cursed him and struck him six or seven times in the face drawing blood. Spaziani then agreed to repay the loan the next day. He obtained money from his friends and repaid the loan the following day.

RE: BILLITERI, ALBERT "BAZE

7.

DEFENDANT'S VERSION OF OFFENSE:

The presentence interview with defendant Billiteri was conducted with defense counsel present. Upon directing the interview to the defendant's version of the offense, as set forth in Count I of the indictment, the defendant solely acknowledged his plea of guilty to Count I, but declined to make any form of a statement. Defense counsel interjected to say that a statement in writing would be prepared and submitted to the Court.

PRIOR ARREST RECORD: FBI No. 3 985 331

4-1-42

(15)

Juvenile Complaint: Truancy

Disp: Referred for social study by intake department.

8-13-42

PD, Buffalo, N.Y.

(16)

GRAND LARCENY, 2nd: 1296 PL

Disp: 8-20-42, major charge dismissed; case transferred to Erie County Juvenile Court where a petition was filed charging delinquency: petit larceny.

9-2-42

Erie County Juvenile Court

DELINQUENCY: PETIT LARCENY

Disp: Acting Judge Hamilton Ward placed defendant on indefinite probation; 4-30-46, discharged from probation without improvement.

The original facts indicate the defendant and several accomplices were arrested as to the theft of a 1935 Ford sedan, valued at \$135.00, which was stolen in Buffalo and driven to the northern outskirts of Niagara Falls, where the car was stripped of its tires. Since the offense was alleged to have occurred in May 1942,

RE: ALBERT "BABE" BILLITERI

8.

PRIOR RECORD: -Cont'd.

at which time the defendant was a juvenile, the major charge was dismissed and the case transferred to the local juvenile court as to a lesser charge. A review of the old Erie County Juvenile Court file reflects the defendant was ultimately discharged on April 30, 1946 "without improvement" for reasons that his conduct was not viewed as satisfactory, he continuously maintained associations with undesirable persons "who seemingly lived by their wits", and he failed to keep and maintain steady, gainful employment.

9-23-42

20-4 V & T; Unlicensed Operator

Disp: Fined \$25.

5-7-43

Erie Co. Juvenile Court

WARRANT: ABSCONDED FROM SUPERVISION

Disp: Following defendant's apprehension on 8-4-44, a hearing on violation of probation was conducted and the defendant was restored to continued supervision.

4-10-44

PD, Buffalo, N.Y.

RAPE; 2010 PL

Disp: 4-11-44, Discharged.

7-22-44

PD, Los Angeles, Calif.

FUGITIVE FROM N.Y.: Suspicion of Murder

Disp: Turned over to Buffalo PD officials on 8-1-44.

8-4-44

PD, Buffalo, N.Y.

SUSPECT MURDER; 1044 PL

Disp: 3-9-44, Discharged

RE: ALBERT "PABE" BILLITERI

9.

PRIOR RECORD: -Cont'd.

8-8-44

Alcohol Tax Unit, Buffalo, N.Y.

VIO. INTERNAL REVENUE LAWS: Distilling & Distribution

Disp: PG to Conspiracy, 7-29-46, sentenced by U.S. Judge Knight to a term of 2 years, suspended, Probation for 2 years.

The facts indicate that a Salvatore Mazzara, Carmen D'Agostino, Frank Buttita, along with a David Ayres, Charles Cimino, Thomas Calla and this defendant erected and operated a distillery at 217 Hudson St, Buffalo, between May 8 and June 10, 1944. On June 5, 1944, the defendant and several other of his aforementioned associates drove a truck to the corner of Busti & Hudson St., where Billiteri assisted in loading 44 5 gallon cans of distilled alcohol, whereupon they drove the truck to Connecticut & West Avenues where the truck was unloaded into a large trailer truck. On June 8, 1944, Frank Buttita was murdered in Buffalo. Several of his co-conspirators were picked up by the Buffalo Police and executed sworn statements which implicated this defendant as involved in the still operation and distribution.

10-31-45

PD, Buffalo, N.Y.

VAGRANCY: 887-1 CCP

Disp: Discharged.

12-7-45

PD, Buffalo, N.Y.

ATTEMPT TO EXTORT MONEY BY THREAT; 857 PL

Disp: 1-10-46, discharged.

The defendant was alleged to have sought to collect \$500 from a 19 year old female proprietor of a Beauty Shop located on W. Chippewa Street, claimed he had been sent by another man to obtain the money which was owed as a loan. Alleged threats of bodily harm were directed to the female proprietress.

RE: ALBERT "BABE" BILLITERI

10.

PRIOR RECORD: -Cont'd.

10-28-48

PD, Buffalo, N.Y.

VAGRANCY: 897-1 CCZ

Disp: Discharged

11-21-48

PD, Buffalo, N.Y.

POSS. BURGLARY TOOLS: 408 PL

Disp: 12-6-48, discharged.

10-13-49

PD, Kansas City, Mo.

INVESTIGATION, Auto Theft

Disp: 10-14-49, released by Auto Theft Bureau

10-31-49

PD, Buffalo, N.Y.

PETIT LARCENY: 1298 PL (Warrant)

Disp: Warrant withdrawn.

2-9-50

USM, Buffalo, N.Y.

CONSPIRACY & ITSMV

Disp: 3-28-50, sentenced by USDJ Burke, Rochester, N.Y.
to a term of 18 mos., US Pen, Lewisburg, Pa.

The Probation Office file is not available. Records in Criminal Docket 5245-C reflect Carmello Rizzo Sicurella, Joseph Anthony Tomaselli and this defendant were named in a three count indictment charging Conspiracy & Interstate Transportation of Stolen Motor Vehicles during the period of October 1949. Defendants were found guilty in a jury trial presided over by the Honorable Harold P. Burke, U.S. District Judge, Rochester, N.Y., who imposed the 18 month imprisonment term on each defendant. Appeals were taken, however, the convictions were affirmed and on April 26, 1951, this defendant was taken into custody and immediately transported to the U.S. Penitentiary at Lewisburg, Pa.

RE: ALBERT "BABE" BILLITERI

11.

PRIOR RECORD: -Cont'd.

11-27-50

PD, Buffalo, N.Y.

ASSAULT: 244 PL (Warrant)

Disp: Warrant withdrawn

3-13-54

PD, Buffalo, N.Y.

VAGRANCY: 887-1 CCP

Disp: Discharged

9-18-64

PD, Buffalo, N.Y.

ASSAULT, 3rd: 120.00 PL

Disp: Discharged

The writer was unable to ascertain the nature of this and the preceding assault charge from the Buffalo PD Identification Bureau.

10-7-66

PD, Buffalo, N.Y.

GAMBLING & CONSCORTING 722-21 CCP & 970 PL

Disp: Not available, however, defense counsel says the charges were dismissed.

The defendant was arrested with numerous other alleged organized crime members at a party at Panarro's Restaurant on West Avenue.

5-8-67

PD, Buffalo, NY

722-11 PL

Disp: Unknown

11-24-69

FBI, Buffalo, NY

CONSPIRACY, EXTORTIONATE CREDIT TRANSACTION

Disp: Indicted Cr-70-197, instant case.

RE: ALBERT "BABE" BILLITERI

12.

PRIOR RECORD: -Cont'd.

10-6-70

FBI, Buffalo, N.Y.

CONSPIRACY, BANK BURGLARY

Disp: 6928-71, acquitted in jury trial before USDJ John T. Curtin.

A three count indictment, Cr-70-162, was filed on October 5, 1970, which charged Salvatore Riniolo, George Guzzatta, and this defendant, and Sam Lagattuta, with conspiracy to enter and attempt to enter a local bank, aiding and abetting and counseling others to enter a bank, and did attempt to enter a bank, violations of 18 USC 371, 2113(a) and 2 and 2113(a). The jury acquitted Billiteri and Lagattuta, however, was unable to agree on a verdict as to companion defendants Riniolo and Guzzetta. On December 8, 1971, the government dismissed the indictment as to Riniolo and Guzzetta.

6-7-71

PD, Buffalo, N.Y.

165-50 PL: CRIMINAL POSS. STOLEN PROPERTY , 1st degree

155.40 PL: GRAND LARCENY, 1st (Extortion)

160.15-1 PL: ROBBERY, 1st

Disp: Indicted by Erie Co. Grand Jury in Criminal Dockets
36272-B & -D; pending.

Erie County Principal District Attorney Thomas Cleary advises the instant indictments relate to the Knox family burglary committed by the Parness brothers and Stanley Seneca. Samuel Lagattuta is a codefendant in both cases. Following the burglary of the Knox family estate, Billiteri and Lagattuta learned that the Parness brothers and Stanley Seneca circumvented them by disposing of the part of the burglary loot directed through "mob members" in New York City. Billiteri and Lagattuta became angry, confronted the burglars and beat them up, in addition to obtaining part of the "sophisticated stuff" (jewelry) from the burglars and demanded and obtained \$1,000 from each of the burglaries. Assistant District Attorney Cleary has advised the writer that defendant

RE: ALBERT "BABE" BILLITERI

13.

PRIOR RECORD: -Cont'd.

Billiteri is scheduled to plead guilty in Erie County Court on June 19, 1972 to both indictments, respectively, Class D, C & B felonies; codefendant Sam Lagattuta has also been scheduled to plead guilty, but to Class D felonies. The writer was further informed that both individuals were ranking members of the local Organized Crime element, principally acted as "enforcers" though also involved in their own loan sharking and gambling (crap) activities, further, that both men must be considered dangerous and violent, though now, by reason of their pleas in both Federal and State court, their active roles as ranking members and "enforcers" of the local "mob" is virtually terminated.

FAMILY HISTORY:

The defendant, in the presence of defense counsel, was viewed as deliberately guarded, furnished only minimal social background information.

The defendant is 45 years of age, a native of Buffalo, New York, born July 17, 1926 (verified according to records of the old Erie County Childrens Court). The defendant is the younger of two sons born of issue to the marriage of the late parents, Frank & Josephine Billiteri, nee Aiello, both reflected to have been Italian immigrant aliens. The father died in August 1947, at approximately 67 years of age. The defendant describes him as an "old world trained" stone mason; past records in the Erie County Probation Department characterized him as a hard working bricklayer, stone mason and carpenter. The defendant's mother died in 1932, at 36 years of age, at which time the defendant would have been 6 years of age. The defendant's older brother, Matthew Billiteri, died in May 1971 at approximately 50 years of age. The defendant declined to identify the deceased brother's employment prior to death, though he indicated the brother was married, his first, the wife's second, by whom he had a natural child now grown. This deceased brother, according to an FBI fingerprint report, had a criminal

RE: ALBERT "DABE" BILLITERI

14.

FAMILY HISTORY: -Cont'd.

record of significance, served a five to ten year term at Sing Sing Prison for narcotic violations in New York City, was also returned as a New York State Parole violator, said for reasons of numerous local arrests and convictions.

The defendant was raised up in the predominantly Italian section of the West Side of Buffalo, where the inhabitants were principally working class people. Following the mother's death, the defendant continued in the custody of his father, who was reported to have handled all forms of housework and cooking chores, and sought to guide and properly raise the defendant by himself. However, the old Erie County Childrens Court records indicate, as the defendant grew older, he was increasingly disinclined to obey his father and eventually came to the attention of local juvenile social agencies. By 14 years of age, the defendant was considered to be a truancy problem in schools, was placed under the care of Childrens Aid Society, which unsuccessfully sought to effect a number of foster home placements, but eventually returned the defendant to the father's home and custody.

Two months prior to the defendant's 16th birthday, though he was not arrested until August 18, 1942, the defendant and accomplices stole a 1935 Ford sedan, which the defendant drove to the northern outskirts of Niagara Falls, where the car was stripped of its tires. The Erie County Grand Jury declined to accept the case on the major charge of Grand Larceny, whereupon the local court referred the matter to the old Childrens Court, which retained jurisdiction as to truancy problems. As previously mentioned, the defendant was adjudicated a delinquent, placed on probation, but in view of his age, placed under supervision of the Adult Division of the Erie County Probation Department. He remained under supervision until April 30, 1946, discharged from supervision "without improvement", considered to have reached the maximum benefits that probation supervision

FAMILY HISTORY: -Cont'd.

was felt to have been able to provide, also, the fact that the defendant had been arrested for conspiracy and involvement in illegal whiskey distilling and distributing. His poor adjustment to probation was characterized by delinquent reporting, associating with undesirable companions, keeping late hours, absconding from probation (arrested in Los Angeles, California July 1944, as a suspect in a local murder case, from which he was dismissed).

This defendant was previously known to our U.S. Probation Office during the period of July 1946 to July 1948. During the latter part of the probation supervision period, the records reflect the defendant's first known involvement in extortion-type criminal behavior, in which the threat of bodily harm was implied. Amongst highly experienced, respected and knowledgeable law enforcement officials, the defendant has subsequently caused to be built, a significant reputation as a sophisticated "loan shark"- extortioner, also, purportedly a very dangerous "enforcer" of unmet "mob" obligations, unhesitant as to resorting to violence. He has been characterized as a trusted, close associate of local organized criminal elements, particularly the upper echelon of same, also, an ambitious ranking member thereof; furthermore, he is strongly alleged to have been involved in other avenues of apparently syndicated crime operations, reputedly involved in his own gambling (bookmaking and crap) operation.

MARITAL:

The defendant married Mary LoCoco, now 50 years of age, on April 6, 1945. The defendant claims the wedding took place in Nativity of the Blessed Virgin Roman Catholic Church in Buffalo, however, the old Childrens Court and other records indicate the marriage

RE: ALBERT "DABE" BILLITERI

16.

MARITAL: - Cont'd.

was effected in Ellicottville, New York, by a Justice of the Peace F. B. Steick.

Four children have been born of issue to the marriage:

Frank is 25, married, father of two children, resides at 64 Inwood Place in Buffalo, said to be employed as a construction worker, a member of Local 210.

Thomas is 24, married, but childless, resides at 445 Callodine Avenue, Eggertsville, New York. His employer was not furnished.

Albert, Jr. is 21, single, resides at the parental home, said to be employed as a construction laborer, who has been contributing towards family support.

Jo Marie is 13, resides in the parental home, is said to be an eighth grade student at St. Margaret's Parochial School. The defendant volunteered that she has suffered a fair amount of emotional affect stemming from the father's arrest and the attendant publicity.

The defendant describes his marriage as satisfactory, a compatible relationship. He indicates his wife has been employed for the past six months as a cashier at Leonard's Superette on Delaware Avenue. He indicates her employment has been dictated on family needs, also, "mental therapy".

HOME & NEIGHBORHOOD:

For the past ten years, the defendant indicates he has been residing in a lower rented flat in a wood frame double house at 793 Ashland Avenue, Buffalo, New York. He indicates he is paying \$85.00 per month rent for an eight room flat which contains four bedrooms.

HOME & NEIGHBORHOOD:

The neighborhood is considered relatively quiet, of mixed double and single, larger type older homes. It is perhaps somewhat significant that a number of past criminal offenders known to this court, also known as members or associates of the organized criminal element, have resided on this street, considered to be the same neighborhood.

EDUCATION:

The defendant claimed that he completed the tenth grade of Grover Cleveland High School before terminating his education due to loss of interest and motivation. The old Childrens Court record indicates the defendant completed the eighth grade of public school, No. 38, where he was known to have a fairly significant truance record. During the period of being under supervision of the Erie County Probation Department, 1942 to 1946, unsuccessful efforts were expended to encourage the defendant to re-enroll in Boy's Vocational High School, however, there is no evidence that he followed such suggestions, rather, instead, effected his working papers through the local Board of Education.

RELIGION:

The defendant was raised up under the tenets of the Roman Catholic faith, however, he indicates he has been very irregular as to attending church services. He claims to be affiliated with St. Joseph's New Cathedral.

INTERESTS & LEISURE-TIME ACTIVITIES:

Defendant expressed interest in playing golf, attending theaters or movies and spending a quiet time at home.

HEALTH:

This defendant stands 5' 10" tall, weighs 228 pounds, appears slightly dark in complexion, is viewed to be slightly paunchy in build. He wears glasses; past records indicate he has defective vision in one eye. The defendant characterizes his present physical health as "fair, not bad". He described his physical ailments as "diabetes, hemorrhoids and high blood pressure", indicates himself to be under medical attention to a Dr. Yablan and a Dr. Curtin, said to be an internist. Otherwise the defendant indicates his past health history has been "reasonably good".

The presentence interview transpired under routine circumstances with defendant's retained counsel present. Defendant failed to demonstrate any overt signs of disturbing personality problems. He was viewed to be guarded and volunteered only the minimal necessary amount of social background information. His candor was suspect; in retrospect, there are several evidences where the defendant was either deliberately untruthful or circumventual in an effort to place himself in the best light possible. A sense of remorse was not reflected. The writer was left with the impression that the defendant was functioning on at least an above average level of social intellect, also adept and/or sophisticated in the use of same, particularly with persons in positions of authority.

EMPLOYMENT:

The defendant acknowledged having had no employment since early 1971, said he has lived off of savings, financial contributions by his sons and friends.

He described his immediate past employment, for a 13 or 14 year period, as a self-employed contractor, concerned with concrete and home improvement jobs. He indicated he has been an active member of the Cement Masons Local 511.

EMPLOYMENT: -Cont'd.

As to a review of non-public files of the Buffalo Police Department, the writer noted, in 1969, the defendant was driving a 1967 Buick sedan, registration tag 1824-EE, which was registered for the Avery General Contractors, 793 Ashland Avenue, which corresponds to this defendant's residence. The writer is unaware as to whether the defendant used a business name other than his own name as to his claimed self-employment. The writer also noted, in 1964, the defendant was allegedly a salesman for the now defunct B & V Motor Sales on Niagara Street, then indicated to be driving Cadillacs.

MILITARY HISTORY:

None. The defendant was rejected from military service in World War II, according to past Erie County Probation records, as physically unfit.

FINANCIAL CONDITION:

Defense counsel advised the writer that he would submit a financial status report on the defendant's assets and liabilities, also, that he would secure and submit the defendant's income tax returns for the years 1969 to 1971.

Respectfully submitted,

WILLIAM S. POWELL, JR.
U. S. Probation Officer

A F F I D A V I T

I, CURTIS C. CRAWFORD, being duly sworn, depose and state as follows:

1. I am Regional Director of the Northeast Region of the United States Board of Parole, with offices at Scott Plaza II, Industrial Highway, Philadelphia, Pennsylvania.

2. The purpose of this affidavit is to set forth additional facts with regard to the order of the Regional Directors of January 13, 1975, in the case of Albert M. Billiteri, Register Number 87332-132, supplementing my affidavit of January 15, 1975.

3. I participated in the meeting of the Board of Parole's Regional Directors held on January 13, 1975, at which time Mr. Billiteri's parole application was decided pursuant to 28 C.F.R. Section 2.17 (Original Jurisdiction). In arriving at their decision, the Regional Directors reviewed the results of the Examiner Panel hearing held on December 11, 1974. The record before the Regional Directors included the hearing summary (Parole Form H-1) prepared on December 11, 1974. A certified copy of this summary is attached herewith (Exhibit 1), for the purpose of demonstrating that this decision was based on a full administrative record which included the Examiner Panel's recommended decision.

4. The offense severity rating of "Very High" was entered for Mr. Billiteri based on the Board's understanding of Lupo V.
orton, 371 F. Supp. 156 (D. Conn. 1974). The Board had before it

information in the pre-sentence report that Mr. Billiteri's convicted offense, viz., conspiracy to commit extortion in violation of 18 U.S.C. Section 371, involved instances of the substantive crime of extortion. Acting upon this information, the Board assigned Mr. Billiteri's offense the rating "Very High," and in compliance with Judge Jon O. Newman's order in Lupo, 371 F. Supp. 162, included the following reason in its Notice of Action dated January 15, 1975 (attached herewith as Exhibit 2), in order to inform Mr. Billiteri that alleged offenses were considered in arriving at a severity rating:

Your offense behavior is rated very high because it involved extortion which is in the very high severity category of the Board's guidelines.

5. The documents contained in the file which was presented to the Regional Directors on January 13, 1975, were the following:

Sentence computation record (Bureau of Prisons Form BP-5, Rev. 8-71).

Pre-sentence Report, Western District of New York, dated June 15, 1972.

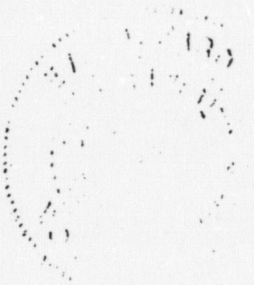
Institutional Classification Summary.

United States District Judge John T. Curtin's Decision and Order dated November 26, 1974.

Henry E. Petersen, Assistant Attorney General, Criminal Division Memorandum to Maurice H. Sigler, Chairman, U. S. Board of Parole, dated March 15, 1974. Certified copy, Exhibit 3 attached (Confidential).

Examiner Panel Hearing Summary, dated December 11, 1974.

In addition, a packet of above materials was circulated among the Directors prior to the January 13 meeting.



Curtis C. Crawford

CURTIS C. CRAWFORD
Regional Director, Northeast Region
United States Board of Parole

Subscribed and sworn to before me this 16 day of April, 1975.

Eva M. Fass

EVA M. FASS, Notary Public
Tinticum Twp., Delaware Co., Pa.
My Commission Expires October 2, 1978

EXHIBIT

1

C E R T I F I C A T E

I, Joseph N. Pokinski, Administrative Examiner for the Northeast Region of the U. S. Board of Parole, with official duties at Scott Plaza No. 2, Industrial Highway, Tinicum Township, Philadelphia, Pennsylvania certify that the following attached document is an exact copy of the Examiner Panel Hearing Summary relating to Albert M. Billiteri, Register Number 87332-132, as is contained in his office file records:

1. Examiner Panel Hearing Summary,
dated December 11, 1974.

IN WITNESS WHEREOF, I have signed this 15th day of April, 1975.

JOSEPH N. POKINSKI
Administrative Examiner
Northeast Regional Office
U. S. Board of Parole
Philadelphia, Pa. 19113

UNITED STATES BOARD OF PAROLE
HEARING SUMMARY

NAME: Billiteri Reg. No. 17232-152
Monitor (or Examiner) Quirk/Spenn Hearing Date 12/11/74
Type of hearing Initial Institution Lewisburg

It is noted at this time that subject originally appeared before the Board on February 14, 1974 at which time the panel referred his case to the Regional Director as an Original Jurisdiction case. An alternate recommendation at that time was to continue to expiration. Billiteri applied to the District Court in the Western district of New York for relief claiming that the panel had erroneously considered his offense as conspiracy and extortion imputing that he had been convicted of both whereas a matter of fact he had only pled guilty to the charge of conspiracy. A further claim that this error was sufficient enough to warrant a rehearing and the court so ordered. The hearing today is in compliance with the court order and is considered a re-interview of an initial hearing.

I. ADVISE HEARING PROCEDURE

Billiteri was advised of the hearing procedure on December 10, 1974 and selected representation. He has been advised that he will be notified of the official decision within 15 working days except in emergencies.

II. OFFENSE AND SENTENCE DESCRIPTION

Subject received a regular adult sentence of five years on July 5, 1972 following his plea of guilty to a charge of conspiracy. In addition to the time imposed, a non-committed fine of \$10,000 was assessed. He has been in federal custody 29 months and has no jail time credit. His mandatory release date is November 8, 1975 with a maximum expiration date of July 3, 1977. As to the offense, the record indicates that in June 1968 and in July 1969, subject along with a co-defendant did willfully make extortion extensions of credit to insert individuals and that thereafter conspired to use extortionate means of any kind against the debtors to collect or attempt to collect the credit and punish the debtors for non payment of the loans. Billiteri is reluctant to discuss this situation, he does say that it was inspired by a need of money at his business at that time as it was in need of money and he felt that this means of obtaining funds

RECEIVED

DEC 16 1974

UNITED STATES BOARD OF PAROLE

UNITED STATES BOARD OF PAROLE
HEARING SUMMARY

At L. BILLITERI

Reg. No. 87332-132

Examiner (or Examiner) Quirk/Grenn Hearing Date 12/11/74
Initial Institution Lewisburg

Page 2

would help him in his difficulty.

The co-defendant Pasquale Napoli received a three year sentence and according to Billiteri has been released from confinement. At the time of Billiteri's conviction, a detainer had been lodged against him by the sheriff of Buffalo, New York charging him with criminal possession of stolen property in the first degree. On July 10, 1972, he received a 4 year sentence with a \$1500 fine for this offense, the penalties to run concurrent with the federal sentence.

III. PRIOR RECORD

Subject's prior record extends back to 1942 when he appeared in juvenile court on a complaint of truancy. He appeared in juvenile court on four additional occasions for various offenses including petty larceny and unlicensed operation of a car. These were all considered juvenile offenses and he was placed on probation as a county. His adult record is rather lengthy with many charges of being dismissed or discharged but he had been convicted of certain offenses notably in August 1944 when he received a 2 year term suspended following his conviction of violation of internal revenue laws. In February 1950 he received a term of 18 months when he was convicted of conspiracy and interstate transportation of a stolen motor vehicle a term he served at the United States Penitentiary in Lewisburg. This confinement represents the second time that he has served sentences. It should be noted at this time that the information in the pre-sentence investigation indicates that Billiteri was considered a part of the local racketeering fraternity in his native Buffalo. The information indicts Billiteri and his co-defendants "ranking members of the local organized crime element particularly principally active as forces also involved in their own loan sharking and gambling activities." It goes on to say that both men must be considered dangerous and violent and played an active role as ranking members and forces of the local "marbone". One notes further too that this particular case was prosecuted by the organized crime strike force.

UNITED STATES BOARD OF PAROLE
HEARING SUMMARY

Name Albert L. BILLITERI Reg. No. 87332-132
Number (or Examiner) Quirk/roan Hearing Date 12/11/74
Type of hearing Initial Institution Lewisburg

Page 3

IV. RELEVANT SOCIAL HISTORY

Date of Birth: July 17, 1926

Family Background:

Subject is a native of Buffalo, New York born to Italian immigrant parents. In his early years, subject was amenable to the direction and correction of his parents but as he grew older he became increasingly difficult to control and began a series of juvenile problems by the time he was 14 years of age.

Schooling:

Subject completed the 10th grade before terminating his education due to loss of interest and motivation. It is noted, however, that while at Lewisburg he has completed his GED requirements and passed the test.

Work Skills/Work History:

Subject described himself as being a self employed contractor and has been so involved for some 14 or 15 years. He is a active member of the Cement Masons Union Local 5111. The pre-sentence also notes that at one time he was a salesman for a Cadillac dealer, a company which has since dissolved.

Marital/Family Situation:

Billiteri married in April 1945 in a religious ceremony and the union produced four children. Three of the offspring were male, the youngest female and the older sons are married. In September of this year, his son Albert, Jr. was slain in what had been described in the local papers as a gang land type slaying. This incident has been a very disrupting thing to Billiteri but even more so his wife, who has had to undergo medical treatment because of the facts in the slaying and the loss of her youngest son. The marriage is a satisfactory one and has been compatible, still endures and subject will return to his wife when released from confinement.

UNITED STATES BOARD OF PAROLE
HEARING SUMMARY

Name Albert L. BILLITERI Reg. No. 87332-132
Member (or Examiner) Quirk/Wrenn Hearing Date 12/11/74
Type of hearing Initial Institution Lewisburg

Page 4

Military:

Subject has no military service.

Drugs/Alcohol:

Nothing significant.

Psychological/Psychiatric:

There is no history of emotional instability or mental illness requiring any sort of consultation or treatment in the defendants background.

V. INSTITUTIONAL PROGRESS

Discipline:

Subject has maintained a clear conduct record.

Academic:

As previously reported, subject completed the requirements for the GED took the test and has been certified as a high school graduate.

Vocational:

Not programmed.

Work Assignment:

Billiteri is working in a mechanical assignment and the records indicate that he is doing a very satisfactory job. In fact, he has been awarded meritorious service recognition.

Attitude/Counseling:

At the hearing today, subject is naturally guarded and appeared quite unwilling to say much about his involvement in the alleged offense. He insists, however, and makes a

UNITED STATES BOARD OF PAROLE
HEARING SUMMARY

Albert D. BILLITERI

Reg. No. 97332-132

Member (or Examiner)

Quirk/Arena

Hearing Date 12/11/74

Type of hearing

Initial

Institution Lewisburg

Page 5

strong point in this case that he plead guilty to conspiracy not to extortion and that any belief that he was guilty of the latter offense is erroneous and prejudicial to his cause. He is a member of the Holy Name Society and has become allied with the Forstaster's activity.

VI. RELEASE PLANNING

When he returns to the community, Billiteri will attempt to re-establish his former concrete business, which has laid dormant during his confinement. He says that he has no ready means to get started but feels that he can qualify for a loan under the small business administration in order to start up again. He will reside with his wife and family.

VII. REPRESENTATIVE'S IDENTIFICATION AND COMMENTS

Originally, Billiteri had selected his counsel Attorney P. Abramowitz to appear in his behalf, but at the hearing today Attorney Stanley J. Collesano, an associate of Mr. Abramowitz's appeared in a pinch hitting role. Mr. Collesano told the panel of the background of the case involving the conspiracy making pointed reference to the differences between conspiracy and extortion and affirming the fact that it was on this particular basis that the court had ordered a re-hearing. He objected to any reference to Mr. Billiteri being an OC case stating that nothing of this kind was proved and indeed Mr. Billiteri had no opportunity to refute the classification. He stated that he felt Billiteri was sentenced to a longer term than his co-defendant because of his prior record. The panel accepted representative's remark, including them in the record for whatever consideration they would deserve at a future time.

VIII. EVALUATION

The panel, in considering the facts of the case and as a result of the re-hearing, felt that the original decision to refer the case for Criminal Jurisdiction was still valid.

UNITED STATES BOARD OF PRISON
HEARING SUMMARY

Part . . . BILLITERI Reg. No. 37332-132
(for Examiner) Quirk/Wrenn Hearing Date 12/11/74
of hearing Initial Institution Lewisburg

Page 5

strong point in this area that he plead guilty to conspiracy not to extortion and that any belief that he was guilty of the latter offense is erroneous and prejudicial to his cause. He is a member of the Holy Name Society and has become allied with the Foranster's activity.

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VII. REPRESENTATIVE'S IDENTIFICATION AND OPINION

Originally, Billiteri had selected his counsel Attorney E. Abramowitz to appear in his behalf, but at the hearing today Attorney Stanley J. Collesano, an associate of Mr. Abramowitz's appeared in a pinch hitting role. Mr. Collesano told the panel of the background of the case involving the conspiracy making pointed reference to the differences between conspiracy and extortion and affirming the fact that it was on this particular basis that the court had ordered a re-hearing. He objected to any reference to Mr. Billiteri being an OC case stating that nothing of this kind was proved and indeed Mr. Billiteri had no opportunity to refute the classification. He stated that he felt Billiteri was sentenced to a longer term than his co-defendant because of his prior record. The panel accepted representative's remark, including then in the record for whatever consideration they would deserve at a future time.

VIII. EVALUATION

The panel, in considering the facts of the case and as a result of the re-hearing, felt that the original decision to refer the case for Criminal Jurisdiction was still valid.

UNITED STATES BOARD OF PAROLE
HEARING SUMMARY

me Albert H. BILLITERI Reg. No. 87332-132
Member (or Examiner) Quirk/Arann Hearing Date 12/11/74
Type of hearing Initial Institution Lewisburg

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It noted a change in the salient factor score, however, by virtue of subject's receiving his GED and classified the offense behavior in the very high severity range. This produced a range of 36-45 months to be served and it is noted that Billiteri has spent 29 months in custody and is subject to a detainer.

IX. TENTATIVE DECISION

Decision #1: Refer to Regional Director for Consideration as Special Offender.

Decision #2: (Alternate) Continue to expiration.

X. REASONS

Your offense behavior has been rated as very high severity. You have a salient factor score of 8.

Guidelines established by the Board which consider the above factors indicate a range of 36-45 months to be served before release for adult cases with good institutional program performance and adjustment. You have been in custody a total of 29 months. After careful consideration of all relevant factors and information presented, it is found that a decision outside the guidelines at this consideration does not appear warranted.

EXHIBIT

2

430

C E R T I F I C A T E

I, JOSEPH N. POKINSKI, Administrative Examiner, Northeast Region, U. S. Board of Parole, with official duties at Scott Plaza No. 2, Industrial Highway, Tinicum Township, Philadelphia, Pennsylvania certify that the following attached document is an exact copy of the Notice of Action relating to Albert M. Billiteri, Register Number 87332-132, as is contained in his office file records:

- 1) Notice of Action dated January 15, 1975.

IN WITNESS WHEREOF, I have signed this 15th day of April, 1975.

JOSEPH N. POKINSKI
Administrative Examiner
Northeast Regional Office
U. S. Board of Parole
Philadelphia, Pa. 19113

UNITED STATES DEPARTMENT OF JUSTICE
United States Board of Parole
Washington, D.C. 20537

Notice of Action

Name Albert M. Billiteri

Register Number 87332-132 Institution Lewisburg

In the case of the above-named, the Board has carefully examined all the information at its disposal and the following action with regard to parole, parole status, or mandatory release was ordered:

**No change in previous en banc order--
Continue to expiration.**

Conditions or remarks:

Reasons for denial, continuance or revocation: (Use separate sheet if necessary)

Your offense behavior has been rated as very high severity. You have a salient factor score of 8. You have been in custody a total of 30 months. Guidelines established by the Board for adult cases which consider the above factors indicate a range of 36-45 months to be served before release for cases with good institutional program performance and adjustment. After careful consideration of all relevant factors and information presented, it is found that a decision below the guidelines at this consideration is not warranted. Your offense behavior is rated very high because it involved extortion which is in the very high severity category of the Board's guidelines.

Although there is information in your file which alleges involvement in organized criminal activity, the decision to continue your case to expiration was (SEE ATTACHED SHEET)

Appeals procedure: You have a right to appeal a decision as shown below. Forms for that purpose may be obtained from your caseworker, and must be filed with the Chief, Classification and Parole, (or his equivalent) within thirty days of the date this Notice was sent.

- A. Decision of a Hearing Examiner Panel. Appeal may be made to the Regional Director.
- B. Decision of the National Appellate Board referred to it for reconsideration. Appeal may be made to the Regional Director.
- C. Decision of the Regional Director. Appeal may be made to the National Appellate Board.
- D. Decision of Regional Directors in cases where they assumed original jurisdiction. Appeal may be made to the National Appellate Board.

January 15, 1975

(Date Notice sent)

Northeast

(Region - Specify)

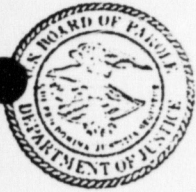
ch

(Docket Clerk)

National Appellate Board

(Check)

432



UNITED STATES DEPARTMENT OF JUSTICE
United States Board of Parole
Washington, D.C. 20537

Notice of Action

Cont.

Name Albert M. Billiteri

Register Number 87332-132 Institution Lewisburg

In the case of the above-named, the Board has carefully examined all the information at its disposal and the following action with regard to parole, parole status, or mandatory release was ordered:

Conditions or remarks: _____

Reasons for denial, continuance or revocation: (Use separate sheet if necessary)

found to be warranted by the other facts in your case, therefore it was not necessary to consider the alleged organized crime involvement in reaching this decision.

Appeals procedure: You have a right to appeal a decision as shown below. Forms for that purpose may be obtained from your caseworker, and must be filed with the Chief, Classification and Parole, (or his equivalent) within thirty days of the date this Notice was sent.

- A. Decision of a Hearing Examiner Panel. Appeal may be made to the Regional Director.
- B. Decision of the National Appellate Board referred to it for reconsideration. Appeal may be made to the Regional Director.
- C. Decision of the Regional Director. Appeal may be made to the National Appellate Board.
- D. Decision of Regional Directors in cases where they assumed original jurisdiction. Appeal may be made to the National Appellate Board.

January 15, 1975
(Date Notice sent)

Northeast
(Region - Specify)

ch

(Docket Clerk)

National Appellate Board

(Check)

E X H I B I T

3

C E R T I F I C A T E

I, JOSEPH N. POKINSKI, Administrative Examiner for the Northeast Region of the U. S. Board of Parole, with official duties at Scott Plaza No. 2, Industrial Highway, Tinicum Township, Philadelphia, Pennsylvania certify that the following attached document is an exact copy of a memorandum relating to Albert M. Billiteri, Register Number 87332-132, as is contained in his office file records:

- 1) Memorandum, dated March 15, 1974, from Henry E. Petersen, Assistant Attorney General, Criminal Division to Maurice H. Sigler, Chairman, Board of Parole, Attention: John Sicoli.

IN WITNESS WHEREOF, I have signed this 15th day of April, 1975.

JOSEPH N. POKINSKI
Administrative Examiner
Northeast Regional Office
U. S. Board of Parole
Philadelphia, Pa. 19113

CONFIDENTIAL

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF JUSTICE

March 15, 1974

DATE:

HEP:VSL:GS:AK:sf
123-66

TO : Maurice H. Sigler, Chairman
Board of Parole
ATTENTION: John Sicoli

FROM : *HEP* Henry A. Petersen
Assistant Attorney General
Criminal Division

SUBJECT: ALBERT M. BILLITERI

Reference is made to John Sicoli's request on March 8, 1974, for information pertaining to the organized crime connections of Albert M. Billiteri.

Albert M. "Dabe" Billiteri has been a longtime member of the Organized Crime Syndicate in the Western New York area. He has an extensive criminal record dating back to 1949 including numerous arrests for assault and narcotics violations. In May, 1953, he pleaded guilty to Federal charges of selling narcotics and was sentenced to five years incarceration in the Sing Sing Penitentiary. Following his release on May 26, 1953, Billiteri returned to Buffalo where he ran an extensive book-making and loanshark operation.

brother
Billiteri quickly rose in prominence with the Buffalo LCN until he became one of the leading "strong arm" men and enforcers for the Buffalo Syndicate - second only to Daniel G. Sansanese. Billiteri specialized in "shaking down" small-time burglars, robbers, fences, pimps and prostitutes by means of threats of force and violence. Together with Pasquale Napoli aka Petty Naples, Billiteri terrorized his debtors by threatening them, beating them, and destroying their property until they repaid his extortionate extensions of credit. Billiteri's name soon became synonymous with fear and terror in every home on the West side of Buffalo.

Billiteri masterminded an organized ring of criminals who systematically burglarized banks in the Buffalo area. He is considered by law enforcement officers and petty criminals alike to be one of the most vicious and predatory underworld figures.

Since Billiteri's imprisonment, his bookmaking and loansharking operations are being handled by Samuel Donito, a LCN lieutenant who is closely associated with Roy Carlisi, the most powerful LCN figure in the Buffalo area. It is believed Billiteri will resume full charge of these illegal enterprises upon his release from prison.

Billiteri is also closely allied with the following well-known Buffalo LCN capos: Joseph Todaro, Sr., Joe Pino, Charles Cassaro, Sam Frangiamore, John Cammilleri, and Sam Pieri.

I strongly recommend that Albert Billiteri not be paroled.

Ex 6.

AFFIDAVIT

I, RICHARD F. SCHALLER, having been duly sworn in the manner provided by law, do depose and say:

That I am a Special Agent of the Federal Bureau of Investigation (FBI) assigned to the Buffalo Field Division. Since 1968, I have coordinated investigations of Federal criminal violations on the part of Albert M. Billiteri, also known as "Babe" Billiteri.

Since 1968, the FBI in Buffalo has received information from a number of sources who have furnished information about a criminal society which is known locally as the "Arm" and which is part of a national criminal network commonly known as the Mafia or La Cosa Nostra (LCN). These sources have either been themselves members of the "Arm" or have been closely associated with members of the "Arm" and these sources have been in a position to furnish information regarding the criminal activities and the individuals involved in this organization.

On September 22, 1967, Source I, who is believed to be legally reliable because he had made admissions against penal interests, advised Special Agent Joseph E. Griffin, Jr., that he was a member of the Stefano Magaddino Organized Crime Family and that Albert "Babe" Billiteri was also a member of the Family, whose particular criminal specialty was loansharking.

On March 20, 1968, Source II, who is believed to be legally reliable because his information over a period of some seven years resulted in multiple arrests and whose information has never been found to be

unreliable and who made admissions against penal interests, advised Special Agent Griffin that following the conviction of Fred G. Randaccio, who was "underboss" in the Magaddino Family of the LCN, there was discussion about a replacement for Randaccio's position and Albert Billiteri was mentioned prominently as a likely candidate to succeed Randaccio, if he is replaced.

On February 25, 1969, Source III told Special Agent Donald E. Hartnett that he frequents gambling clubs where loansharkners loan money to the gamblers and has observed Albert Billiteri loaning money 6 for 5 to gamblers.

On October 8, 1970, Source IV, who has been closely associated with the leadership of the LCN for a period of years, advised that he knows Albert Billiteri to be a member of the LCN Family of Stefano Magaddino. This source provided information for approximately three years regarding power struggles among the leadership of the Buffalo LCN, much of which was corroborated by other knowledgeable sources who provided similar information.

On October 8, 1970, this source also reported a dispute which Billiteri previously had with Freddie Randaccio.

On February 14, 1973, Source V, a close relative of an individual previously reported to be a high-placed LCN member, furnished information concerning the then current leadership of the Buffalo LCN and identified Albert Billiteri as a member of that organization. This source furnished information on only several occasions, however, information provided by him regarding membership in the LCN and recent power struggles of LCN leadership

was corroborated by information furnished by other established, reliable and knowledgeable sources.

Source VI has furnished information to the FBI since 1970. He is reported to be a member of the Buffalo LCN and to be close to the leadership of the Buffalo LCN. This source has furnished information which has resulted in five convictions. He has not been known to furnish false information.

This source furnished information regarding the LCN leadership and members of the LCN on several occasions, the last such occasion being April 25, 1975. This source has advised that he has known Albert Billiteri to be a LCN member since 1959. Billiteri reported to John Cammilleri (deceased), who was a Lieutenant in the Buffalo LCN Family. From conversations with Billiteri, he knows that Billiteri has engaged primarily in loan-sharking, bookmaking and has also obtained income from shake downs of burglars.

During 1971, Russell De Cicco, an admitted LCN member, reported to the FBI that he knew Albert Billiteri to also be a member of the Buffalo LCN Family.

During June and July, 1969, a telephone intercept and an oral intercept were installed in the residence of Albert Billiteri, 793 Ashland Avenue, Buffalo, New York. These intercepts were installed pursuant to court orders signed by Judge John O. Henderson, United States District Court, Buffalo, New York, authorizing the telephone and oral intercepts. During the period telephone and oral conversations were intercepted, conversations

between Billiteri and others were recorded in which Billiteri discussed 6 for 5 loans with other individuals. During the period of the intercept conversations were also recorded between Albert Billiteri and Iggy Lococo. These intercepts disclosed that Lococo was bookmaking for Albert Billiteri and Lococo was settling up with Billiteri on the bets made by battors.

Joseph Galioto, who furnished information confidentially to the Federal Bureau of Investigation between May, 1972 and March, 1975, furnished information concerning a bookmaking operation which he was told was owned and operated by Albert Billiteri. In May, 1972, Frank Timineri asked Galioto to use his (Galioto's) residence and residence telephone to operate a horse book. Galioto gave Timineri permission to use his residence for the book and thereafter assisted Timineri, Phil Dentico and Iggy Lococo in operating this horse book. Galioto worked in the office of this book answering the telephone and taking horse bets between June, 1972 and early August, 1972, when the office was moved to another location. The office was moved back to Galioto's residence in mid-October, 1972 until mid-December, 1972 during which time Galioto again assisted Lococo and Timineri in operating this book. Galioto again assisted Timineri in operating this horse book, answering the telephone in the office between mid-February 1973 and late March, 1973.

During the above periods, horse bettors, most of whom were bookmakers, called in long lists of bets to Galioto and others who worked in the office of the book. Galioto and others who answered the telephone in the bookmaking

office, maintained records of the bets by each bettor and maintained records of the amount won or lost and the amount owed by or to the various bettors. Galioto turned these records over almost daily to Iggy Lococo and Frank Timineri who were responsible for paying or collecting from the bettors who called in the bets to the bookmaking office.

During the course of Galioto's association with Timineri and Lococo, both told him that the book was owned by Albert Billiteri and that Billiteri's family was receiving money weekly, even though Billiteri was then in jail. On November 21, 1972, Galioto advised that during the past week, Iggy Lococo told him that he had been booking horses for Albert Billiteri for years. Lococo said that Billiteri made so much money out of this bookmaking operation that he was able to use the money he made from booking horses to start a loanshark operation and thereafter gave money to his brother, Jerry Billiteri, Nick Zendano, Albino Principe and Vincent Giamo who worked for Billiteri's loansharking operation. Lococo said that Billiteri had also asked him to work loansharking for him but he refused. Lococo said that Billiteri was arrested by the FBI because he was breaking too many heads to collect delinquent loans.

On December 12, 1972, Lococo told Galioto in the presence of Frank Timineri and Albert Billiteri, Jr. that he had just given Albert Billiteri's wife \$3,000 which was for Albert Billiteri. During the week of February 5, 1973, Lococo told Galioto that he had been paying "Babe" Billiteri's wife \$300 a week from the horse book but that had been reduced and he is now paying \$200 per week.

On November 27, 1973, Frank Timineri again told Calisto that the horse book he and Iggy Lococo had operated was for Babe Billiteri and discussed the recent history of Billiteri's bookmaking. Timineri said that when Billiteri went to jail in the Summer of 1972, he was backing two horse books, one operated by Patty Napoli and Sam Napoli and the other operated by Iggy Lococo. Patty Napoli began serving a Federal sentence on a charge of loansharking for Albert Billiteri at the same time as Billiteri began serving his sentence, and Billiteri arranged for his son, Frank Billiteri, to take over Patty Napoli's job and assist Sam Napoli in operating the book. Also before going to jail, Albert Billiteri asked Frank Timineri to assist Iggy Lococo in operating the book. Timineri said that he has assisted Iggy Lococo in operating the book for Billiteri since Billiteri went to jail and this book operated independently from the Sammy Napoli-Frank Billiteri book. Timineri said that both books have made regular payments to Albert Billiteri's wife while he has been in jail.

On January 14, 1975, Frank Timineri advised your Affiant that after Albert Billiteri went to jail in 1972, he began working for Billiteri's book with Iggy Lococo, who was then supervising the operation of the book for Billiteri. Timineri said he worked in the office of this book on and off the last such occasion being after Lococo was injured in an automobile accident. Timineri said he was told by Lococo that he, Lococo, was managing the bookmaking operation for Billiteri while Billiteri was in jail and that he, Lococo, was paying Billiteri's wife and/or son \$200 a week from the

book regardless of whether or not the bookmaking operation was making or losing money. Timineri said that he himself had delivered the \$200 a week to Frank Billiteri, the son of Albert Billiteri, while Albert Billiteri was in jail.

Frank Timineri has since been subpoenaed to testify regarding this and other matters before a Federal Grand Jury and has refused to answer any questions.

With regard to shake down of burglars, two sources have furnished the FBI information that they were shaken down by Albert Billiteri after they had committed local burglaries in Buffalo. Gregory Parness is one source who furnished such information.

Source VII furnished information to the FBI for about six months in 1972. Although this source furnished information for only a limited period of time, he furnished significant information, much of which was corroborated by information from other reliable sources. This source advised on July 31, 1972, that following a burglary in which he was involved, Albert Billiteri became aware that he had committed the burglary and "shook him down" for part of the proceeds of the burglary.

On August 24, 1972, this source advised that Carmen LaBruna told him that two years previously of an experience he had with Albert Billiteri. This source advised that about 1970 or 1971 the Buffalo LCN was attempting to learn who had committed the robbery of the wife of "Chicago Joe" Sciales, a Buffalo LCN member. Burglars were being questioned to learn the identity

of those who committed the robbery of Mrs. Sciales. Carmen LaBruna told source VII that on one occasion Sam Lagattuta brought Carmen LaBruna to a house and Albert Billiteri was in this house. Billiteri and Lagattuta took LaBruna to the basement of the house, tied a rope around his neck, hung him from the rafters and questioned him about the robbery of Mrs. Sciales until he was almost dead.

RICHARD F. SCHALLER, S.A.
FEDERAL BUREAU OF INVESTIGATION

Subscribed and Sworn Before Me

This _____ day of _____, 1975.

1 BERNARD SPAZIANO , after being
2 duly sworn, was examined and testified as follows:
3
4

5 EXAMINATION BY MR. SCHROEDER:

6 Q. Mr. Spaziano, where do you live, sir?

7 A. North Tonawanda.

8 Q. And at what address?

9 A. 179 Van Oak.

10 Q. And are you employed sir?

11 A. Yes.

12 Q. And by whom are you employed?

13 A. Self-employed.

14 Q. Doing what?

15 A. Construction maintenance and I have a barbershop.

16 Q. Are you a barber?

17 A. Yes.

18 Q. And do you have a barbershop?

19 A. Yes.

20 Q. And where is it located?

21 A. North Tonawanda.

22 Q. At what address?

23 A. 410 Oliver Street.

1 Q. Do you know an Albert Bilitteri?

2 A. No.

3 Q. Do you know a Babe Bilitteri?

4 A. I've heard of him.

5 Q. Has he ever been to your barbershop?

6 A. He stopped in looking for someone.

7 Q. Do you know a Pasquale Napoli?

8 A. No.

9 Q. Ever met Patty Napoli?

10 A. No.

11 Q. Never been at the barbershop?

12 A. No.

13 Q. Have you seen him anywhere else?

14 A. No.

15 Q. Do you know Steamboat Bilitteri?

16 A. No.

17 Q. Never met him?

18 A. No. Never talked to him.

19 Q. Do you know a Jeff Todara?

20 A. Yes.

21 Q. Had dealings with him? Did you ever borrow money
22 from him?

23 A. No, never borrowed money from Jeff Todara.

1 Q. Did you ever gamble with Joseph Todara Jr.?

2 A. Never.

3 Q. Do you know Sam Rizo?

4 A. I saw him.

5 Q. Did you ever borrow money from him?

6 A. No. I tried one time.

7 Q. When did you try to borrow money?

8 A. About a year ago. I tried to borrow money
9 for my barbershop.

10 Q. What did you ask him?

11 A. I told him I needed a few dollars, I don't
12 remember.

13 Q. And what did he say?

14 A. I'm not lending no money. I'm not in the business.

15 Q. Did you know him to be in the business of lending?

16 A. Yes.

17 Q. How did you know of him being in the lending
18 business?

19 A. Well, it's common knowledge. Right?

20 Q. You have to learn from somebody, don't you?

21 A. Well, I might have heard it in a crap game.

22 Q. Where?

23 A. Oliver Street.

- 1 Q. Who was running a crap game?
- 2 A. I presume it was Nicholetti.
- 3 Q. Benny Nicholetti?
- 4 A. I never seen him in there. I understood it was
- 5 his game.
- 6 Q. Benny Junior?
- 7 A. Benny Senior. I had an argument with him.
- 8 Q. Over what?
- 9 A. I hustled him out of some money.
- 10 Q. What kind of money?
- 11 A. \$350.
- 12 Q. He gave you \$350?
- 13 A. It was presumably for my business.
- 14 Q. Was it a loan?
- 15 A. Straight loan. Not six for five.
- 16 Q. Did I say anything about six for five?
- 17 A. Everybody else has.
- 18 Q. Who's everybody else?
- 19 A. All the guys that have been bothering me.
- 20 Q. When did they say six for five?
- 21 A. The last two months that they have been bothering
- 22 me.
- 23 Q. Have you ever paid a loan six for five?

- 1 A. I couldn't tell you from whom because they don't
2 tell me their names.
- 3 Q. Who you borrowed from?
- 4 A. Not when you're in trouble.
- 5 Q. What kind of trouble were you in?
- 6 A. You know, I was in this trouble.
- 7 Q. What kind of trouble?
- 8 A. Gambling.
- 9 Q. Well, how did you find these people to borrow
10 money from?
- 11 A. I got a phone number at a crap game.
- 12 Q. Another player knew them?
- 13 A. Yes.
- 14 Q. Do you know the name of the player?
- 15 A. No, I wasn't interested.
- 16 Q. And you just called up and said you wanted to
17 borrow money?
- 18 A. Yes, I wanted to borrow \$500 and the guy said
19 six for five month.
- 20 Q. Who did you talk to?
- 21 A. I didn't know who I talked to.
- 22 Q. What did you say?
- 23 A. I wanted some money. I told him my name was

1 Bernie Spaziano and that I got your number from
2 a guy in a crap game on Oliver Street. And I
3 asked if I could borrow the money.

4 Q. What did he tell you?

5 A. I don't remember the exact conversation 'cause
6 it's been four or five years that you're talking
7 about.

8 Q. Then what happened?

9 A. I met him. I met him on Niagara Falls Boulevard.

10 Q. And where did you meet, inside the restaurant?

11 A. On the corner.

12 Q. How many were there?

13 A. There were four of them.

14 Q. Never saw them before?

15 A. No.

16 Q. Don't know who they were?

17 A. No.

18 Q. And you just walked over to the car?

19 A. No.

20 Q. And what happened? Tell us what happened.

21 A. They wanted to know who kind of a car I was
22 driving. They pulled up and I got out of the
23 car and walked up and they were in front of my

1 car. And I said I wanted to borrow some money.

2 I'm Bernie Spaziano.

3 Q. And then what happened?

4 A. I told him I want to borrow \$500 and the guy
5 told me it's going to be six hundred because
6 that's the rate at that time.

7 Q. Did they give you the money?

8 A. The guy in the back seat gave me the money.

9 Q. Did you pay it back?

10 A. Yes. I paid everyone of them back.

11 I borrowed money a half dozen times.

12 Q. From whom?

13 A. From the same number each time.

14 Q. Is that number still in operation?

15 A. I couldn't tell you. I quit gambling a few years
16 ago and I threw the number away.

17 Q. What is the number that you called?

18 A. I don't remember.

19 Q. Do you know what exchange it was at least?

20 A. Buffalo.

21 Q. Was it 63?

22 A. I don't remember.

23 Q. Did you ever borrow money from Sonny Nicholetti,

1 Senior?

2 A. I just told you. I said Junior. It was from
3 Sonny Nicholetti.

4 Q. How much did you borrow?

5 A. I told you \$350.

6 Q. Was this Nicholetti Senior or Nicholetti Junior?

7 A. It was Junior I borrowed the money from.

8 Q. And where did you borrow this money?

9 A. I came down and seen him.

10 Q. What did he say to you?

11 A. I needed some money, right. I told him that I
12 had a business I wanted to go into. I wanted
13 to open up a teen club. I told him it was
14 going to cost me \$700.

15 Q. Well, what did he say?

16 A. He said that we'll go into business together and
17 he gave me \$350.

18 Q. And were you supposed to pay back the \$350?

19 A. Yes.

20 Q. Was it six for five? Did you ever borrow money
21 at six for five from Nicholetti?

22 A. No.

23 Q. Was it older Nicholetti or Sonny that you borrowed

- 1 from?
- 2 A. The father.
- 3 Q. What did he hit you for?
- 4 A. When I borrowed the \$350, I never went into
5 business.
- 6 Q. You didn't hold back 25% in a card game?
- 7 A. No.
- 8 Q. Did you ever run a card game?
- 9 A. Yes, I've run card games.
- 10 Q. And did you ever take 25% off the top of a
11 card game?
- 12 A. No.
- 13 Q. Never?
- 14 A. I was approached.
- 15 Q. Who approached you?
- 16 A. I don't know. The guy came in there and - -
- 17 Q. When was that?
- 18 A. This was during a card game a couple of years
19 ago.
- 20 Q. The last time?
- 21 A. Two years maybe.
- 22 Q. Two years ago. Where was it that he approached
23 you?

- 1 A. Where I had my card game and my shoeshine stand.
- 2 Q. Which is located where?
- 3 A. On Oliver Street.
- 4 Q. What number?
- 5 A. I don't remember the address, 4 something.
- 6 Q. Where was your shoeshine stand?
- 7 A. Two blocks down.
- 8 Q. Do you know the name of the guy that approached
- 9 you?
- 10 A. No, I don't know.
- 11 Q. You never saw him before?
- 12 A. He was probably from the Arm, more than likely.
- 13 Q. What is the Arm?
- 14 A. What is the Arm. Who knows what the Arm is.
- 15 Q. What do you know the Arm to be?
- 16 A. The Big Boys, that's all.
- 17 Q. Was it the Big Boys?
- 18 A. I couldn't tell you.
- 19 Q. It's an organization?
- 20 A. It used to be. And he said he was from the
- 21 organization. He said the Big Boys wanted a cut.
- 22 Q. Who was the Big Boys, Benny Nicholetti?
- 23 A. He didn't say.

1 Q. You never borrowed any money from Babe Bilitteri?

2 A. No, I tried.

3 Q. No six for five from Babe?

4 A. I said I tried.

5 Q. Did you ever tell anybody that you borrowed money
6 from Babe Bilitteri?

7 A. No. This guy that talked to me figured I was
8 meeting Babe when I said a fat man.

9 Q. Who did you mean by the fat man?

10 A. That is what I saw him in. He was driving a
11 big Buick convertible.

12 Q. What year was it?

13 A. What year, I don't know, but I knew the color.

14 Q. What color was it?

15 A. A green.

16 Q. A green convertible?

17 A. With a white top.

18 Q. Did he have glasses?

19 A. If I remember.

20 Q. Do you know Tanky Bilitteri?

21 A. No.

22 Q. Never met him?

23 A. No.

- 1 Q. Did you ever live in Buffalo, New York?
- 2 A. No.
- 3 Q. Have you ever been over to the West Side?
- 4 A. Oh, yes.
- 5 Q. Over to Ashland Avenue?
- 6 A. No, not Ashland Avenue.
- 7 Q. Ever been over to Babe Bilitteri's house?
- 8 A. No, never.
- 9 Q. And you never borrowed any money from Bilitteri?
- 10 A. I said I tried.
- 11 Q. You realize that you're under oath?
- 12 A. I went to the Hudson Street clubhouse and they
- 13 wouldn't let me in.
- 14 Q. When did you go to the Hudson Street clubhouse?
- 15 A. Anywhere from two or three years ago.
- 16 Q. And is the clubhouse on Hudson and Niagara
- 17 Streets?
- 18 A. Yes.
- 19 Q. Well, who is the guy who runs the club?
- 20 A. I don't know that.
- 21 Q. Did you ever talk to Babe?
- 22 A. He wouldn't let me in. He came in looking for
- 23 Joe LaPorta because Joe had the office next door

1 and he couldn't find him.

2 Q. And what did he say to you?

3 A. He was looking for him. He said to me do you
4 know where he is and I said I don't know.
5 He's a salesman, he's on the road all the time.

6 Q. You never borrowed money from Joe LaPorta?

7 A. \$20, that's all.

8 Q. Did you ever borrow \$100 for him?

9 A. No.

10 Q. Did you ever borrow \$60 for him?

11 A. Yes, as a matter of fact I did.

12 Q. When was that?

13 A. I don't know, a couple of years ago, maybe like
14 a year ago.

15 Q. Did you ever tell Joe LaPorta that you had the
16 money and that your head was going to get kicked
17 in?

18 A. Are you kidding. Whose going to kick in anybody's
19 head for \$100?

20 Q. You never told that to Joe LaPorta?

21 A. When he borrowed, I was short and I had to pay
22 my rent.

23 Q. Is that what the \$60 was for?

1 A. That's right.

2 Q. The only time that you have been beat up or
3 roughed up was on that Nicholetti deal?
4 That's the only time that threats have been
5 made to you?

6 A. I had threats on the phonecall.

7 Q. From whom?

8 A. Who knows.

9 Q. What kind of threats?

10 A. I owed money. I was late seven or eight months
11 a lot of times.

12 Q. Do you mean the guy from the Arm?

13 A. That's right.

14 Q. The six-for-five money?

15 A. Right.

16 Q. And those are the only loans that you have told
17 us about?

18 A. Well, I have had a half a dozen all from the
19 same people. All from the same number.

20 Q. And where did they take place, the rest of these
21 loans?

22 A. Most of them on the Boulevard.

23 Q. Three Coins Restaurant?

1 A. Different spots.

2 Q. Whereabouts?

3 A. Four Season one time. The next time a restaurant
4 it was the Cavalier Restaurant.

5 Q. Where else?

6 A. I can't remember off hand.

7 Q. Where would you pay the money back?

8 A. They tell me to go to such-and-such a parking
9 lot with the money, that's all.

10 Q. And what did you believe would happen if you
11 didn't come to such-and-such a spot at a certain
12 time?

13 A. Who knows. You never know.

14 Q. What did you think might happen?

15 A. You never know. They might rough you up,
16 who knows.

17 Q. Did they ever rough you up?

18 A. Who?

19 Q. These people that you borrow money from?

20 A. No.

21 Q. Did they ever threaten to rough you up?

22 A. Yes.

23 Q. When did they threaten to rough you up?

1 A. Three years ago.

2 Q. Do you owe anybody any money now?

3 A. I don't owe anybody any money now.

4 Q. Nobody at all?

5 A. No.

6 Q. Any banks?

7 A. I filed bankruptcy a year and a half ago.

8 Q. When did you re-open your barbershop?

9 A. A month and a half ago.

10 Q. Where did you get the money?

11 A. I worked.

12 Q. Where?

13 A. Paper mill. International Paper Mill in
14 Tonawanda.

15 Q. How much did you make over there?

16 A. \$150 a week.

17 Q. How long did you work there?

18 A. Three months.

19 Q. And you netted how much?

20 A. Each week from \$100 to \$150.

21 Q. And you're working there three months?

22 A. Yes.

23 Q. Do you drive a car?

- 1 A. No.
- 2 Q. Are you married?
- 3 A. Yes.
- 4 Q. Where do you live?
- 5 A. In North Tonawanda.
- 6 Q. What is your rent?
- 7 A. \$140 a month.
- 8 Q. Got any children?
- 9 A. Yes, two.
- 10 Q. Your wife lives with you?
- 11 A. Right.
- 12 Q. Your wife works?
- 13 A. No.
- 14 Q. So you support and pay rent of \$140 a month
- 15 while working at a paper mill?
- 16 A. Yes.
- 17 Q. And you re-opened your barbershop a month and a
- 18 half ago?
- 19 A. Yes.
- 20 Q. Do you owe anybody any money?
- 21 A. No.
- 22 Q. Have you talked to Babe Bilitteri, ever talk to
- 23 him on the phone?

1 A. I don't even think I ever talked to Babe
2 Bilitteri. I think he said hello.

3 Q. What bar?

4 A. Le Spot.

5 Q. Where is that located?

6 A. On Delaware Avenue.

7 Q. In Buffalo?

8 A. In Kenmore.

9 Q. Did you see him any place else?

10 A. The time I saw him in the car.

11 Q. You're sure that you didn't borrow any money
12 from Babe Bilitteri?

13 A. I said no. I didn't borrow any money from
14 Babe Bilitteri.

15 Q. How do you know?

16 A. Because I know. I don't think he's stupid enough
17 to come to me and give me money. I don't think
18 this guy is stupid.

19 Q. How long have you known him?

20 A. I don't know him; I know of him.

21 Q. What do you know of him?

22 A. Well, I understand he is a big bookmaker also.

23 Q. Isn't he a money-lender?

1 A. Six for five money. That goes along with
2 bookmaking.

3 Q. The two go hand-in-hand?

4 A. Yes.

5 Q. And do you gamble now?

6 A. I used to gamble.

7 Q. And you got in deep, didn't you?

8 A. Not really.

9 Q. Not really? How far in were you?

10 A. I might have lost thousands but I never got in
11 that deep.

12 Q. How deep?

13 A. I lost \$20,000, big deal. I never borrowed that
14 kind of money, I only borrowed hundreds.

15 Q. From the six-for-five man?

16 A. That's what I paid.

17 Q. And you don't owe anybody now?

18 A. That's right. I might owe somebody \$10 or
19 something.

20 Q. Do you owe Joe Todaro anything?

21 A. No.

22 Q. Did you ever gamble with Joe Todaro Senior?

23 A. No.

- 1 Q. Did you ever gamble with Joe Todaro Junior?
- 2 A. Never. I was at Nicholetti's one time.
- 3 Q. When was that?
- 4 A. Four years ago.
- 5 Q. What was going on while you were there?
- 6 A. There was a card game.
- 7 Q. Who was there?
- 8 A. I don't know their names.
- 9 Q. Is Joe Todaro Senior one of the Big Boys?
- 10 A. I don't know.
- 11 Q. Where do you know him from?
- 12 A. I know him from the pizzeria.
- 13 Q. Which pizzeria?
- 14 A. The Nova Pizzeria.
- 15 Q. That is located in Tonawanda?
- 16 Have you ever been to the Pizzeria?
- 17 A. Sure.
- 18 Q. Have you ever borrowed any money?
- 19 A. Ten or twenty dollars.
- 20 Q. From whom?
- 21 A. From Little Joe Todaro.
- 22 Q. When did you pay it back?
- 23 A. I don't remember.

1 Q. What kind of rates?

2 A. There was no rates. I was in there three or four
3 times a week buying pizza. I needed \$10 so I
4 asked him.

5 Q. And he just gave you ten and you gave him back
6 ten the following week?

7 A. Yes.

8 Q. The total amount of money you borrowed at one
9 time was about how much?

10 A. At the most it was \$500 at one time.

11 Q. And you paid it back?

12 A. I paid them all back, \$400, probably more.

13 Q. How much more?

14 A. Seven or eight hundred.

15 Q. Out on a \$500 loan?

16 A. Six months late, what did you expect?

17 Q. And you're not into them for any more loans right
18 now?

19 A. I quit.

20 MR. SCHROEDER: Anybody have any questions of Mr.
21 Spaziano?

22 THE FOREMAN: When you borrowed money at the
23 parking lot at the Three Coins

1 Restaurant, did you by any chance
2 take note of what the registration
3 of the car was?

4 MR. SPAZIANO: I could care less what the
5 registration was. I'm not a cop,
6 I was there for the money. I owed
7 men, I was in trouble.

8 THE FOREMAN: How could you be sure you were
9 giving the money back to the right
10 parties?

11 MR. SPAZIANO: Because I knew them.

12 MR. SCHROEDER: But you're positive that you have
13 never borrowed from Babe Bilitteri?

14 MR. SPAZIANO: Not unless he had a mask on.

15 MR. SCHROEDER: You're positive that you never
16 borrowed money from Babe Bilitteri?

17 MR. SPAZIANO: I'm positive of that.

18 MR. SCHROEDER: Do you realize that you have been
19 under oath, and do you also realize
20 that failure to tell the truth
21 can constitute the crime of perjury?

22 MR. SPAZIANO: Right.

23 MR. SCHROEDER: Thank you, Mr. Spaziano.

* * * * *

1 time went on I got more fear in me and then I
2 figured that it could happen.

3 Q. That is what prompted you to pay the initial
4 \$300?

5 A. Right.

6 MR. SCHROEDER: Does anybody have any questions
7 of Mr. Frigioni?

8 (No response.)

9 MR. SCHROEDER: Thank you very much, Mr. Frigioni.
10 (Witness excused.)
11
12

13 J O S E P H L A P O R T A , having been
14 first duly sworn, was examined and testified as
15 follows:
16

17 EXAMINATION BY MR. SCHROEDER:

18 Q. Where do you live, sir?

19 A. 8421 Sheridan Drive.

20 Q. And that is in - -

21 A. The Williamsville area.

22 Q. And how long have you lived there?

23 A. About 4 years.

1 Q. And how long have you lived in the Buffalo area?

A. About 30 years.

3 Q. Do you know a person by the name of Albert

4 Bilitteri? He goes under the name of Babe

5 Bilitteri, and do you know his brother Matthew

6 Bilitteri?

7 A. Yes.

8 Q. Do you know him by any nicknames?

9 A. I think they call him Steamboat.

10 Q. Do you know a Jerry Bilitteri?

11 A. No.

12 Q. Do you know Patty Napoli or Pasquale Napoli?

13 A. Patty, yes.

14 Q. And do you know an Albino Principe?

15 A. No.

16 Q. Do you know a Shasha?

17 A. No.

18 Q. How about Sam Lagatutta?

19 A. That I've heard of but I don't know him.

20 Q. How long have you known Babe Bilitteri?

21 A. I have known him since I was 18 years old.

22 Q. Did you grow up in the same neighborhood with
23 him?

- 1 A. Yes.
- 2 Q. Have you ever heard of what kind of a business
- 3 Babe Bilitteri is in?
- 4 A. Well, I heard that he loans money.
- 5 Q. Loan-lending business?
- 6 A. Yes.
- 7 Q. And did you ever hear the term six for five?
- 8 A. Yes.
- 9 Q. And do you know what that means?
- 10 A. Yes, if you borrow five dollars, you pay back
- 11 six dollars.
- 12 Q. Now, do you know whether Babe Bilitteri was in
- 13 that business?
- 14 A. I assume.
- 15 Q. Did there ever come a time when you borrowed money
- 16 on behalf of an individual or vouch for somebody?
- 17 A. I vouched for a person, yes.
- 18 Q. And when was that?
- 19 A. Back in 19⁶/₅8. I would say in January of '58,
- 20 I believe.
- 21 Q. '58?
- 22 A. Yes.
- 23 Q. And who did you vouch for?

- 1 A. For a man by the name of Donald Tonaus.
- 2 Q. And how much money was borrowed at that time?
- 3 A. \$200.
- 4 Q. And who actually made the arrangements for the
- 5 loan?
- 6 A. Well, I talked to Babe because he wanted to
- 7 borrow \$5,000. He had a contract which was
- 8 from the Steel plant.
- 9 Q. This is Donald Tonaus?
- 10 A. He wanted to borrow \$5,000. He came to me with
- 11 the idea that he wanted me to loan this money
- 12 to him. He said he would work this contract
- 13 and I told him I was not able to do anything
- 14 like that. He asked me if I knew anyone that
- 15 would loan him the money and I says, "There's
- 16 a possible chance that you can talk to Bernie
- 17 Sp1 a z i who is the barber next door."
- 18 Q. Next door to where?
- 19 A. My office on 408 Oliver Street.
- 20 Q. You had a place of business there?
- 21 A. Yes, I did.
- 22 Q. And this Bernice Spiazzi was next door to you?
- 23 A. Yes. I assumed from what Bernie had told me

1 that he could have gotten an amount of money
2 for a loan like this six for five.

3 Q. Spiazzi told you that?

4 A. Yes.

5 Q. Did he ever tell you from whom he could get
6 the money?

7 A. He told me it was from Babe Bilitteri. He
8 mentioned Patty Napoli too.

9 Q. Patty too?

10 A. A guy you can borrow money from.

11 Q. He says Babe and - -

12 A. He used to come down here to the barber shop
13 and on several occasions came in to see
14 Spaziano. I understand they had to get some
15 money from him.

16 Q. Who came down to see Spaziano?

17 A. Well, Babe was there and also Patty Napoli.

18 Q. You saw both of them there?

19 A. I saw Babe there twice and I saw Patty there
20 a few times when he was alone.

21 Q. And when was that time period?

22 A. I would say it was going back in the summer months
23 of '69.

1 Q. Summer of '69?

2 A. Yes.

3 Q. You saw Babe and Napoli at Spaziano's place of
4 business?

5 A. Well, they were out in front of the place.

6 I saw Pat get out of the car and walk into
7 Spaziano's barber shop.

8 Q. Did Spaziano tell you what they were there for?

9 A. After they left he came over to my office and
10 seemed to have a weird look on his face and I
11 asked him what was happening. He says that
12 they were there for money. I asked him did
13 you pay him? He said "No." They were supposed
14 to come back on the first occasion and then
15 he asked me for a loan of \$300. I refused him.
16 I told him I didn't have no \$300 and he told
17 me he was going to get his head kicked in or
18 something like that. I told him go to your
19 father, he has money. So he left the office
20 and he came back later on that day and I loaned
21 him \$100 and he seemed to be relieved.

22 Q. Did he say who was going to kick his head in?

23 A. He said the boys.

1 Q. Did he ever identify these people in any other
2 term?

3 A. Well, a few times he mentioned a Babe and a
4 Patty Napoli.

5 Q. Did he ever use the term "The Arm"?

6 A. Yes, he did quite a bit.

7 Q. You heard that Spaziano mentioned the Arm?

8 A. Yes.

9 Q. What did that mean to you?

10 A. I assumed it was this Babe and Patty were loaning
11 the money.

12 Q. This would be the organization for the Mafia?

13 A. That word is said very freely.

14 Q. But he said he owed Babe money?

15 A. He said he owed him money. He asked me to loan
16 him more money and I told him to get lost.
17 He came over later and I finally loaned him
18 sixty dollars.

19 Q. And when he came over, what did he say?

20 A. He had a great amount of fear that he was going
21 to get beat up. I took sixty dollars out of my
22 pocket and I gave it to him.

23 Q. Did you ever hear whether he was beat up or

1 missing?

2 A. I know one time that he was beat up for a
3 gambling debt.

4 I understand this was over on Oliver Street in
5 one of the taverns.

6 Q. And after you gave him the \$60, did he pay that
7 back?

8 A. Well, it took him a while to pay it back.

9 Q. When did you lend him the \$60?

10 A. I would say it was towards the end of the summer
11 months.

12 Q. of '69?

13 A. Yes.

14 Q. Did he say who he owed the money to?

15 A. He said the Arm.

16 Q. Had you seen Babe or Patty at the shop or in
17 the vicinity at that time or during that period
18 of time?

19 A. Yes, I did.

20 Q. Babe Belitteri?

21 A. Yes, I saw Babe on one occasion and then I saw
22 Patty there on a couple of occasions.

23 Q. And this Spaziano came over and asked you to

1 lend him more money?

2 A. I told him to stay the hell away from me.
3 I told him I didn't want to be bothered and
4 that I had problems of my own.

5 Q. Did there come a time when anybody else asked
6 you to help him get some money?

7 A. Yes. This Don Tonaus had shared the office
8 with me at 408 Oliver Street and he was looking
9 for \$5000 which he called five big ones.
10 He asked me if I knew where I could get
11 money and I said go talk to Bernie Spaziano.
12 Bernie sent him back to me and gave Babe a
13 call on the phone.

14 Q. Bernie told you to call Babe?

15 A. No. He told that to Tonaus. He had the phone
16 number when he came back and he used my phone
17 and he called down there, and - -

18 Q. In your presence?

19 A. Yes, I was standing around in the area. Then
20 he says, "Here, Babe wants to talk to you."
21 So Babe says, "What kind of a guy is this
22 Joe?" I told him that as far as I knew he seemed
23 to be straight because he has common knowledge of

1 various things. This was during the winter
2 months and he says, "Does he have anything to
3 show?" Well, I knew that he had a couple of
4 trucks and equipment. He said to said him down
5 on Hudson Street. Well, before this had taken
6 place he wanted me to try to get him a loan for
7 \$2500 through the Afco Security, which is a
8 home improvement loan. I made out an application
9 and I knew at that time he owed quite a few
10 people. In less than a period of, I would say,
11 a day and a half he told me it was very, very
12 bad and that they don't want any part of this
13 man. So he didn't believe me and he personally
14 took a ride down to the Afco Security and
15 see what's down there.

16 Q. This is Tonaus?

17 A. Yes. He told me that he had to raise this
18 money because he wanted to get back into the
19 business and he was looking for \$5000 and this
20 is how it all occurred. We brought this contact
21 down on Hudson Street and talked to, I believe,
22 Patty or Babe.

23 Q. This was after the phone call in your office?

1 A. Yes.

2 Q. Is this place in particular, on Hudson Street
3 that you're making reference to?

4 Is it a restaurant or something?

5 A. It's a club. It's like a private club.

6 Q. Is that the Anchor Club?

7 A. Yes, it is.

8 Q. And this is where Babe told you to come down
9 that night?

10 A. Well, he told Tonaus to come down and then for
11 a period of a good week and a half nothing was
12 done about it. And Babe came out.

13 Q. To your place of business?

14 A. He told me what the hell was I trying to pull.
15 Well, Joe I've known for a long time. This
16 guy is a real phony. So I said to him what do
17 you want from me. I was only trying to be a
18 nice fellow. He said that he wouldn't give him
19 the right time.

20 Q. Meaning Tonaus?

21 A. Yes. So then Tonaus came in later that day
22 knowing that the word was up about the money.
23 I said don't try to kid anybody because you know

1 the predicament you're in. He asked me to
2 loan a thousand or whatever I could. Well,
3 as a result it was agreed to give him \$200
4 under the understanding that the money would
5 be given to me and that I would be responsible
6 to give it to Tonaus. We finally met Tonaus
7 there at the bar.

8 Q. Who was there?

9 A. Me and Tonaus. Tonaus was down there, he must
10 have been since 8 o'clock in the morning.

11 Q. When was this meeting?

12 A. During the winter months, I think of '69. I
13 think it was right about - - it was right after,
14 just around December, if I recall.

15 Q. '68?

16 A. Yes, '68.

17 Q. And did you meet down at the Anchor Club with
18 Tonaus?

19 A. Yes.

20 Q. Who else was there?

21 A. Patty was there.

22 Q. Patty Napoli?

23 A. Yes.

1 There were a few other fellows there that I
2 didn't know.

3 Q. What happened when you went in there?

4 A. We'd go into the so-called billiard room and
5 Patty says, "We're only going to go \$200".
6 I looked at Tonaus and he said that he was
7 more than anxious to get \$200. So Patty handed
8 me the \$200. He put it in my hand and I in
9 turn took it and gave it to Tonaus.

10 Q. Now, was anything said to how the loan was to
11 be paid? Terms of the loan?

12 A. He said to pay it, he would have it paid back
13 in three weeks. They started talking money
14 and I didn't listen. I started playing
15 at the pool table because I was not interested
16 in what their conversation was after that.

17 Q. All right. And then what happened? Did he
18 say how much he would have to pay back in
19 three weeks?

20 A. Well, I believe Tonaus told me that he had to
21 pay back \$40 in a period of three weeks.

22 Q. Other than the \$200?

23 A. Yes, other than the \$200. That's the way it

1 sounded.

2 Q. All right.

3 A. So I says, "Tonaus, are you sure you're going
4 to have this money?" He told me that he should
5 be straightened out by that time and he will
6 come down and he will pay him the money. So
7 several weeks had gone by and it was not paid
8 and I got a phone call saying that they were
9 waiting for the money.

10 Q. Who called you?

11 A. If I recall it was Patty Napoli.

12 Q. Was this around the middle of February?

13 A. I think it was that time, yes.

14 Q. And what did he say to you?

15 A. He said that he wanted me to come down to the
16 club. And he said that I should have Tonaus come
17 down too. Well, I got ahold of Tonaus on the
18 phone and he said that he would be down there
19 and he never showed up.

20 Q. Then what did you do?

21 A. So I was down there and I talked to Patty for
22 a good half hour.

23 Q. What did Patty say?

1 A. Patty says, "Well, make sure that you got a hold
2 of Babe and talk to him about this."

3 Q. Patty told you to get a hold of Babe?

4 A. Yes, I called him.

5 Q. Where did you call Babe?

6 A. I called him at his house.

7 Q. Did Patty say the loan was not paid or what?

8 A. Patty says that he didn't come and then he
9 started cursing.

10 Q. You mean Tonaus didn't come down?

11 A. Right.

12 Q. So you called Babe the next day?

13 A. Yes, and Babe got a little put-out about it.

14 Q. What did he say to him when he called as best
15 as you can recall?

16 A. I told him Babe, I was down there and Tonaus
17 did not show up. He said "Well he better have
18 the money this coming weekend." And then he
19 told me to be down there. I think it was
20 towards the weekend. I tried to get a hold of
21 Tonaus and he did not answer any of my calls.
22 So when I went over to his house he claimed that
23 he had to pick up the money and that he was going

1 to run it down there.

2 Q. This is Tonaus you are talking about?

3 A. Yes.

4 Q. And did you tell Tonaus about Babe calling?

5 A. Yes. He says "Don't worry about it, I'll take
6 care of it."

7 Q. Well - -

8 A. I'm worried about it. I'm in debt to pay \$200.
9 So we went up to my office and made several
10 telephone calls to fellows trying to get money.
11 Well, I told him to have the money and to meet
12 me the next day.

13 Q. Did you make arrangements to meet Babe at the
14 club?

15 A. Well, then it was another meeting. I was supposed
16 to be down there the following Thursday or
17 Friday.

18 Q. This is in what month?

19 A. We're talking about March.

20 Q. '69?

21 A. yes, of '69.

22 Q. Did you meet Babe at the Anchor Club?

23 A. I had gone down there, to the club. Babe was not

1 there but Patty was there and again I was told
2 that this Tonaus was supposed to be down at the
3 club and that he never showed up again. So
4 I had taken \$60 from my pocket and I gave it to
5 Patty. I told him to give it to Babe and when
6 I see Tonaus then I will get the \$60 from him.

7 Q. During that period of time did anybody tell you
8 that anybody was around?

9 A. I believe that they said that Patty was up there
10 looking for me and then he went over to the
11 barber shop.

12 Q. Did he ever tell you when two men had come
13 around to the office?

14 A. Yes. Two men came looking for me and I assumed
15 it was Babe and Patty.

16 Q. Did she describe what they looked like?

17 A. Yes, and she described Patty. I believe Babe
18 was kind of a fat guy.

19 Q. After that, did there come a time when you were
20 contacted by Babe for anything else?

21 A. Well, I hadn't bothered to call and I think
22 they finally got a hold of Tonaus. Tonaus was
23 supposed to show up but he never did.

1 Q. Did there come a time when you were contacted
2 again?

3 A. Yes, I was told down at the club to be there
4 at the club.

5 Q. Who told you to be down there?

6 A. Bilitteri called me on the phone and made sure
7 that I was coming down there.

8 Q. And you didn't go down there that night?
9 Then what happened?

10 A. Well, I called him on the phone and he wasn't
11 down there at the time I called.

12 Q. You called down at the club?

13 A. Yes, and I talked to Patty and Patty told me
14 to give a call around 11 o'clock. So I called
15 down there at 11 and Pabe wanted me to come
16 down and I told him I couldn't. I told him
17 I was in the house taking customers and just
18 couldn't leave. He told me that he wanted the
19 money and that he didn't want to hear any more
20 stories. Then I tried in vain to get a hold
21 of Tonaus. He avoided every call that I made.

22 Q. What happened after that?

23 A. I went looking for him at his mother's house where

1 he was staying. Everytime I'd call they'd
2 hang up or start getting mad and ask who it
3 was and then they'd hang up on me. He told
4 them that I was making threats, that I was
5 going to beat him up and kill him.

6 Q. Tonaus said that?

7 A. Yes. I told his mother that I was going to
8 give him a punch in the mouth.

9 Q. You said that to Tonaus' mother?

10 A. Yes.

11 Q. Why did you say that?

12 A. Well, this guy was getting hostile with me.

13 Q. Then what happened?

14 A. Then Bilitteri called me and told me to be
15 down at the Town House on that afternoon at
16 about 2:00 o'clock. He told me that I'd better
17 be there, and so I did go down. And we sat
18 at a table and had a few drinks and he started
19 cursing me out. He told me that I was a
20 louse and a bum, that I was trying to pull the
21 wool over his eyes. He said that the money is
22 now going up from \$200 to something like \$600.
23 I said where am I going to get this much money?

1 He says, "You're making it, I don't care where
2 you get it." I said, wait a minute and I should
3 not be held responsible. And he said to me that
4 I took the money and that Patty saw me take the
5 money and hand it to Tonaus. He told me that I
6 was still responsible for it. So I tried to
7 talk to him like a gentleman and he told me that
8 the money should be paid very shortly or else
9 there is going to be trouble.

10 Q. Did he make any gestures or anything?

11 A. So he said in a hostile way there was going to
12 be trouble and he said that you're responsible
13 for the money and departed. He said that he
14 was going to give me a couple of weeks to get
15 a hold of Tonaus and get the money and get down
16 to the club. I said to him why don't you go
17 after him and stop bothering me. He told me
18 the reason for that was because the money was
19 given to me. Then two or three weeks later
20 they called me and wanted me to come down to
21 the club. I refused to go down there. I wouldn't
22 go down because I didn't have the money. When
23 I finally did get a hold of Tonaus he wrote a check

1 for cash of \$600 which he gave me. This is going
2 back around the end of August, if I recall.

3 Q. Before we got to that check part, did you have
4 another meeting with Babe?

5 A. Yes, he called me again about several weeks later
6 and it was Patty that told me to come.

7 Q. Patty Napoli called and told you to call Babe?

8 A. Babe said he wanted to meet me down at the Town
9 House. I was supposed to meet him at about 11
10 or 11:30. As I recall I went down there and
11 he wasn't there and so I was on my way out when
12 I seen him looking for a parking spot. So I
13 waited for him out side and then he got out of
14 the car and I could see he was in a very vulgar
15 mood. So we went to my car and he says, "I see
16 you got a new Cadillac." And I said yes. I told
17 him it was mine and the bank's. He says "Joe,
18 I'm not going to tell you any more. This bullshit
19 has gone far enough. When you owe me money you're
20 going to get hurt if you don't pay it back."
21 Then he started, "You son of a bitch, you bastard."
22 Then he lifted his arm and said, "I should poke
23 your eyes out."

1 Q. How did he lift his arm?

2 A. He took his hand and I was sitting and he pointed.

3 MR. SCHROEDER: You're indicating his index finger
4 and gouged them at your eyes.

5 BY MR. SCHROEDER:

6 Q. And then what did he say?

7 A. He come toward me and called me a dirty mother
8 fucker and a cock sucker and a son-of-a-bitch
9 and if the money wasn't paid by that weekend
10 that somebody is going to get hurt and he was
11 looking at me. I pulled away from him and I
12 recall that he slapped me in the face.

13 Q. And then he hit you in the face with his hand?

14 A. Yes.

15 Q. Did he say anything more about your eyes?

16 A. He says that the money had better be here this
17 Friday otherwise forget it.

18 Q. What did he mean by that?

19 A. That's it, he said forget it.

20 Q. I assume that would be the end?

21 A. After that he says how much money do you have
22 with you? I took the wallet out of my pocket and
23 he took it and took \$20 and left \$4. Then he

1 threw the wallet back at me.

2 Q. Was he doing this in a rough manner?

3 A. In quite a rough manner.

4 Q. When he made the gesture towards you, did he
5 say he was going to cut your eyes out?

6 A. He said I'm going to poke your fucking eyes out.

7 Q. You were afraid?

8 A. I was afraid.

9 Q. Did you believe what he was saying to you?

10 A. At that time, yes I did.

11 Q. So that then you made an attempt to pay that
12 money out of your pocket?

13 A. Well, I went looking for Tonaus and I was pretty
14 well put out. I got a hold of Jimmy Bruno.
15 That Jimmy don't owe him any money and that
16 the man was looking for trouble and if he
17 got a hold of him it was going to be trouble.
18 Finally in desperation I got a hold of his girl.
19 I asked her if she knew where Jimmy was. She
20 said "All right, I'll talk to him." She called
21 me on back and says that he would have a check
22 for me that day. I didn't get the check that
23 day. I would say a day and a half passed and

1 I wa circling around the house that was
2 staying at with his girl friend. I spotted
3 his truck in the back yard and I pulled behind
4 him so he was not able to back out. And he come
5 out and I says, "Don, if I don't have the money
6 by this week then it's either going to be
7 you or me."

8 He says "I'm sick of you pestering me."
9 And he took a check out of his pocket which was
10 made out for \$600 and handed it to me. He
11 told me that the check was good and that he
12 didn't want to be bothered with me any more.
13 I said there is \$120 that came out of my pocket.
14 Plus you owe me some money back from the office.
15 He says "That's too bad." I says, "What do you
16 mean, too bad?" So he says, "I'll take care
17 of it later." And I drove off and the bank was
18 closed. I couldn't get the check cashed anywhere
19 because it was the weekend. So I called down
20 at the club again and I told Patty I had \$600.

21 Q. This is Patty Napoli?

22 A. Yes. He says, "You meet me at the club on
23 Saturday afternoon." So I went down there and

1 he says, "Follow me" and he got in his car.

2 He drove on down and we went to Babe's house.

3 Q. Babe Bilitteri? You know where he was living
4 at that time?

5 A. Ashland Avenue, down near Forest, I believe.
6 So we drove into his driveway and he pointed
7 for me to get out of the car. We went into the
8 house and he walked behind me.

9 Q. Who's this?

10 A. Patty. And Babe was in the kitchen and his wife
11 was there and a couple of kids and she greeted
12 me, "Oh, how have you been?" I grew up with
13 her sister and that's where I knew these people
14 from. And he told his wife to go in the living
15 room with the kids. So I pulled the check out
16 of my pocket and he looked at it and he says,
17 "This isn't any good, you're going to get it
18 cashed and bring the money back." I said,
19 "Well, I can't get it cashed." I told him I'd
20 have to cash it Monday. And he said, "All right,
21 you get the check cashed Monday and you meet me
22 at the club." He wanted me to meet him at the
23 club. I can't come to the club because money is

1 business. He says, "All right, I'll meet you up
2 at the Kenmore Bedding, right out in front there."
3 So I went down to the Liberty Bank and sure
4 enough I cashed the check and ran down to where
5 Babe was and he was standing in front and he
6 motioned me to come in and we went inside.
7 I pulled the \$600 out of my pocket and I handed
8 it to him and he counted it and I said, "Does
9 that make us straight?" He says, "Yes, but it
10 should be a lot more."

11 So I asked him what about my \$120 and he
12 says "Forget that." It came out of my pocket
13 and I wanted to know when I was going to get
14 it back. He said, "You tell Don when you see
15 him that I want to see him." And that was the
16 end of it, and I was glad to get it over with.
17 Then and there I washed my hands of the whole
18 matter and this is all that occurred.

19 Q. Did you get your \$120 back?

20 A. No, I never got paid or been compensated for the
21 money.

22 Q. Do you know Augie Frigioni?

23 A. Yes.

1 Q. Do you know whether he borrowed any money from
2 Babe or Napoli?

3 A. Yes, he had because he was very afraid of Babe
4 and when Babe had come up to my store last
5 summer he had asked me about Augie. I told
6 him that he was running some black cup for me
7 and he says, "Where is he now?" I told him
8 that as far as I knew he was out on the road
9 working. He said, "Get in the car and show me
10 where he's at." So we got in the car and I didn't
11 want any trouble where my customers were
12 concerned. So I misled him. I told him that
13 this is the area, but I don't see the trucks
14 around. He's probably not working today.

15 He told me the next time that he was working
16 to tell him, which I did not do. Then when I
17 saw Augie about two days later, I mentioned it
18 to Augie and Augie seemed to be concerned about
19 it. He looked worried and he said, "Well,
20 I'll take care of it." I said, "Well, you better
21 because I don't want to see you get hurt."

22 Q. You figured that Augie would get hurt if he
23 didn't pay off the loan?

1 A. Yes.

2 Q. When did this occur?

3 A. Back around July, early June or July.

4 Q. What year?

5 A. '69.

6 MR. SCHROEDER: Anybody have any questions?

7 A JUROR: Did you get the money that he took
8 out of your wallet?

9 MR. LaPORTA: All total it came to \$120 out of
10 my own pocket.

11 A JUROR: And all the grief with it?

12 MR. La. PORTA: And all the aggravation and getting
13 my head kicked in and insulted.

14 MR. SCHROEDER: Were you afraid if you didn't
15 pay the \$600 something would
16 have happened?

17 MR. LaPORTA: I probably would have gotten beat
18 up.

19 THE FOREMAN: What was the name of that gentleman
20 that was doing the s'b contracting
21 work for you?

22 MR. LaPORTA: Frigioni, F-r-i-g-i-o-n-i.

23 THE FOREMAN: Do you know where he lives?

1 MR. LaPORTA: On Fillmore Avenue, off Broadway.

2 THE FOREMAN: Thank you very much.

3 (Witness excused.)

4

5

6 DONALD TONAUS, being duly sworn
7 was examined and testified as follows:

8

9 EXAMINATION BY MR. SCHROEDER:

10 Q. Do you know an individual by the name of
11 Albert Bilitteri?

12 A. Yes.

13 Q. Do you know Babe Bilitteri?

14 A. Right.

15 Q. And when did you first come to meet Babe Bilitteri?

16 A. About a year and a half ago.

17 Q. About a year and a half ago or less?

18 A. Yes.

19 Q. Did you meet him through somebody?

20 A. Yes, a friend of mine.

21 Q. And was this Joseph LaPorta?

22 A. Yes.

23 Q. And can you describe how it took place for us?

1 A. I wanted to borrow some money and couldn't get
2 it from anywhere.

3 Q. Were you in some kind of business at that time?

4 A. Yes.

5 Q. What kind of business?

6 A. Construction.

7 Q. Where is that located?

8 A. On Oliver Street. At 408 Oliver Street.

9 Q. How long had you known Joseph LaPorta?

10 A. A few months, six months maybe.

11 Q. Beginning when?

12 A. Oh, I'd say last summer.

13 Q. This would be what year?

14 A. '68.

15 Q. In 1968?

16 A. Right.

17 Q. And did you share a business facility together?

18 A. Yes.

19 Q. When was that?

20 A. In '68.

21 Q. And where was this business facility?

22 A. 408 Oliver Street.

23 Q. And you say you wanted to borrow some money,

1 when was this?

2 A. Oh, about September.

3 Q. Of what year?

4 A. '68.

5 Q. And had you attempted to borrow the money through
6 a bank?

7 A. No.

8 Q. A lending operation?

9 A. No.

10 Q. Any particular reason why you didn't?

11 A. I could not get no money from them.

12 Q. Your credit was no good?

13 A. That's right.

14 Q. And so what did you do, ask Mr. LaPorta to get
15 you money?

16 A. Yes.

17 Q. And what brought you to asking Mr. LaPorta?

18 A. We were in the same office and I asked him if
19 there was anyone where I could borrow money
20 from.

21 Q. What did he say?

22 A. He said he might be able to find out.

23 Q. And did there come a time when he did find out?

1 A. Yes, that day.

2 Q. And what did he tell you?

3 A. Well, he told me to go up and see this Babe
4 Bilitteri.

5 Q. Babe Bilitteri?

6 A. Yes.

7 Q. And did you go see Babe Bilitteri?

8 A. Yes.

9 Q. And when was that?

10 A. It was a day or so later.

11 Q. What period of time?

12 A. October of '68.

13 Q. And where did you go to see Babe Bilitteri?

14 A. Up at a club.

15 Q. Is that a bar here in Buffalo?

16 A. Yes.

17 Q. A bar over by City Hall?

18 A. Right.

19 Q. Did you meet Babe Bilitteri there?

20 A. Yes.

21 Q. Was anybody else present?

22 A. There was other people there but - -

23 Q. I mean, were you at a table or booth, where were

1 you sitting?

2 A. Not at that time.

3 Q. When you got there, what did you discuss, what
4 did he say to you?

5 A. I wanted to borrow \$3000 and put up property for
6 security.

7 Q. And what did he say?

8 A. He wanted to know how long and how I was going
9 to be able to pay it back. I told him I had
10 some money and I would be able to pay it back.

11 Q. Did he discuss what terms the loan would be on?

12 A. Yes.

13 Q. What did he say?

14 A. Oh, I couldn't tell you exactly. It was for a
15 period of six months and he wanted to see the
16 deed to the property.

17 Q. Did you ever hear the term six for five?

18 A. Yes.

19 Q. Do you know what that means?

20 A. Six dollars for five.

21 Q. And was that the kind of rate that Bilitteri was
22 going to give?

23 A. Yes.

1 Q. And did he discuss with you that kind of
2 method of finance when you asked for the \$3000?

3 A. No, the first time when I brought the deed up.

4 Q. What did he say then?

5 A. He gave me the rates. What it was to cost me.

6 Q. What did he give as the rates?

7 A. I couldn't give you the exact figures but I
8 would have to pay back about \$7000 or \$8000.

9 Q. So you had to pay back about six or seven thousand
10 dollars in six months?

11 A. Right.

12 Q. And did you pay that loan?

13 A. No.

14 Q. And did he say what the terms would be if you
15 didn't make the payment on time?

16 A. No, I met him the second time when I took him the
17 deed to the property. That is when he told
18 me about the rates and he was going to look the
19 property over.

20 Q. Did he use the term Vig or Vigorish?

21 A. Yes.

22 Q. And have you ever heard Babe Bilitteri use that
23 term?

- 1 A. The second time, when we met in the car.
- 2 Q. And what term did he use?
- 3 A. Vig.
- 4 Q. And what does that mean?
- 5 A. Vigorish is anything that costs.
- 6 Q. It's an added interest upon the interest if you
- 7 miss a payment?
- 8 A. Yes, but they call interest Vig too.
- 9 Q. Did there come a time when you didn't get the
- 10 \$3000 loan, you say?
- 11 A. No, I couldn't take it. I couldn't pay it back.
- 12 Q. So then what happened?
- 13 A. Well, a little later I wound up with a job and
- 14 I needed some money.
- 15 Q. When was this?
- 16 A. January of '69.
- 17 Q. And you needed some money then?
- 18 A. Right.
- 19 Q. How much money did you need then?
- 20 A. \$500.
- 21 Q. And what did you do? You called Babe Bilitteri
- 22 directly or what?
- 23 A. No, I asked Joe LaPorta at the office.

- 1 Q. You were sharing office space at that time?
- 2 A. Yes.
- 3 Q. And what did you do as far as needing money?
- 4 A. Well, I made a phone call and arranged for me
- 5 to go up to the place to meet Patty Naples.
- 6 Q. Is that Patty Napoli? Pasquale Napoli?
- 7 A. I'm not sure.
- 8 Q. Do you know him as Patty Napoli?
- 9 Did LaPorta say who he was talking to that day
- 10 at the office?
- 11 A. No. He did say I was to meet Patty at 8 o'clock.
- 12 Q. And did he say where?
- 13 A. Yes. It was at this social club.
- 14 Q. And where is the social club located?
- 15 A. On Hudson.
- 16 Q. This is on Hudson and Niagara Falls in Buffalo?
- 17 A. Right.
- 18 Q. And was Patty Napoli there that night you went
- 19 to the club?
- 20 A. Yes.
- 21 Q. And was anybody else there?
- 22 A. There were several others.
- 23 Q. Did you see Babe Bilitteri there?

- 1 A. No.
- 2 Q. Did you ask for him?
- 3 A. No.
- 4 Q. What happened when you met with Patty ?
- 5 A. I told him Joe sent me and he said he was
- 6 expecting me. He asked me what I wanted and
- 7 I told him I needed \$500 and he asked me how
- 8 was I going to pay it back. I told him about
- 9 this job I had and - -
- 10 Q. And what did Patty say then?
- 11 A. Well, he told me, he said he'd see Babe and
- 12 he will let me know. I'll stop back the following
- 13 night.
- 14 Q. Patty Napoli said that he would see Babe and
- 15 let you know?
- 16 A. Right.
- 17 Q. Did he say he needed Babe's okay?
- 18 A. Yes.
- 19 Q. And what did you do then?
- 20 A. It was several meetings over at the club.
- 21 Q. This is the same club again?
- 22 A. Right. Babe said to me how do I know you have
- 23 a job or how are you able to pay the money back?

- 1 Q. And when was this meeting?
- 2 A. It was in '69 also.
- 3 Q. What year?
- 4 A. January of '69.
- 5 Q. All right. And what transpired at these meetings?
- 6 A. Well, he wanted to know - - he wanted proof I
- 7 had a job.
- 8 Q. And did you give him any kind of proof?
- 9 A. The next day I brought - - I told him I'd give
- 10 him a purchase order for the job.
- 11 Q. From where?
- 12 A. From Ashland Oil.
- 13 Q. You had a construction contract or an order from
- 14 Ashland Oil to do work?
- 15 A. Right.
- 16 Q. And did you bring that purchase order with you?
- 17 A. The next day I took it up to the social club.
- 18 I was if I brought that up, I'd get the money
- 19 the next day from Patty.
- 20 Q. All right. Did you go to the social club?
- 21 A. Right.
- 22 Q. And did you meet Patty Napoli?
- 23 A. Right.

1 Q. And what happened when you met with him?

2 A. Well, we discussed the terms and he wanted me
3 to pay weekly and I told him I couldn't raise
4 money weekly but I wanted to pay one payment
5 at the end of the month.

6 Q. How much were you going to borrow?

7 A. \$500.

8 Q. And what did he say the terms would be?

9 A. At first he wanted \$150 a week.

10 Q. For four weeks?

11 A. Yes.

12 Q. And what did you say to that?

13 A. I told him I couldn't make payments weekly.
14 I had no money coming in.

15 Q. So, if you made the \$150 payment a week you were
16 going to pay \$600 for a \$500 loan or six for five?

17 A. Right.

18 Q. And what did you discuss then?

19 A. I told him I wanted to pay the six hundred at
20 the end of the month.

21 Q. And what did he say?

22 A. He said that they don't do business like that
23 and when they do you have to pay extra.

1 Q. Extra what?

2 A. They charge so much extra a week.

3 Q. They used the term Vigorish?

4 A. Yes.

5 Q. Did he say extra Vigorish?

6 A. Yes.

7 Q. So that if you borrowed the five hundred dollars
8 and wanted to pay it back at the end of the
9 month in one lump sum it would cost you more?

10 A. Right.

11 Q. More than six for five?

12 A. Right. We talked back and forth and then he
13 said, well, you'd have to see Babe about the
14 money.

15 Q. So who went to the club?

16 A. Well, I met them up there and I'm not sure if
17 Patty was there that night or not.

18 Q. And what did you discuss at the club?

19 A. Well, I had the purchase order and so forth up
20 there and he says, "Well, you'll have to have
21 someone to vouch for you." So I talked to Joe.

22 Q. Joe LaPorta?

23 A. Right.

1 Q. And you asked Bilitteri if LaPorta could vouch
2 for you?

3 A. Yes, I did.

4 Q. What did he say?

5 A. Yes.

6 Q. Did he say he knew LaPorta?

7 A. Yes.

8 Q. And then what happened?

9 A. And then the next day I asked Joe and then he
10 said, "All right." He would meet us up at the
11 club that night.

12 Q. Did LaPorta say anything to you about the
13 amount on the loan, or discuss paying the loan?

14 A. He said you know if you don't pay the loan
15 back - -

16 Q. What did he mean by that?

17 A. He will bust your head or arm or something like
18 that.

19 Q. Did you know that would be the way?

20 A. I heard it all my life.

21 Q. When have you lived in this area?

22 A. All my life.

23 Q. And what did you believe to be the case in this

1 kind of transaction?

2 A. If you didn't get your arm broken or wound up
3 in the hospital you are lucky.

4 Q. Worked over?

5 A. Yes, sir.

6 Q. And did you believe that would happen to you?

7 A. I believed - - yes.

8 Q. You believed that they'd do it?

9 A. Yes.

10 Q. You didn't assume that they would pursue you
11 in a Court of law?

12 A. No. They might bust my head or anything.

13 Q. Do you believe that would happen if you didn't
14 pay the loan?

15 Did you believe that they'd work you over if
16 you didn't pay the loan?

17 A. No.

18 Q. So then you paid the loan?

19 A. Yes.

20 Q. And then what happened? Who gave you the
21 money?

22 A. Joe LaPorta.

23 Q. Where was that?

1 A. At Niagara and Hudson.

2 Q. And who was there?

3 A. Me, Joe and Patty.

4 Q. And who got the money from whom?

5 A. Patty gave Joe and Joe gave it to me.

6 Q. Did you see Patty give the money to Joe?

7 A. Actually, no. Patty reached into his pocket
8 and gave Joe some money and they were going
9 down the stairs. Joe gave me the money.

10 Q. When you were leaving did Patty say anything to
11 you?

12 A. He says, "Now, you know what will happen if you
13 don't pay the money back."

14 Q. And what did LaPorta say to you?

15 A. He told me the same thing.

16 Q. And then what happened?

17 A. Within two weeks Joe LaPorta was asking about the
18 money. In the meantime I had the job done and
19 he calls up Ashland saying I owed him \$800.

20 Q. Did anybody else call you about the money?

21 A. No.

22 Q. What did you do in the meantime?

23 A. Kept working.

1 Q. And LaPorta called you?

2 A. Oh, yes.

3 Q. And what did he say when he called?

4 A. He said that he got a call from up in Buffalo
5 and that they're going to bust his head and
6 bust my head.

7 Q. Who did he say was going to do this?

8 A. He just said that.

9 Q. Did he ever say he was contacted by Bilitteri?

10 A. He said Patty was around to see him.

11 Q. Did there come a time when you finally got
12 some money to give to LaPorta?

13 A. Yes.

14 Q. When was that?

15 A. June.

16 Q. Of what year?

17 A. '69.

18 Q. And tell me about that, just what did you do,
19 what happened?

20 A. Well, he contacted me. I was putting a little
21 swimming pool in and he asked me when I was going
22 to pay him the money. I told him I was going
23 to give him a check for \$600.

- 1 Q. Where was that check from?
- 2 A. The Liberty National Bank.
- 3 Q. And how was it made out?
- 4 A. To cash.
- 5 Q. And the amount was \$600?
- 6 A. Right.
- 7 Q. And then you gave this check to LaPorta?
- 8 A. Right.
- 9 Q. Do you know what he did with it?
- 10 A. He cashed it right away because I got it back
- 11 within that month's period.
- 12 Q. You got it back in your cancelled checks?
- 13 A. Yes.
- 14 Q. Did you ever have any conversation with Bilitteri?
- 15 A. No.
- 16 Q. How about Patty Napoli?
- 17 A. No.
- 18 Q. Have you ever borrowed any money from any other
- 19 lenders?
- 20 A. I borrowed \$500 once from Sam Riso.
- 21 Q. And when was that?
- 22 A. Same period of time.
- 23 Q. Of '69?

1 A. Yes.

2 Q. six for five? And what period of time did you
3 pay it back?

4 A. Yes.

5 Q. How much did you have to pay on that loan?

6 A. Six hundred for five hundred.

7 Q. And what were the terms of the loan if you
8 didn't pay it back?

9 A. There was no understanding.

10 Q. Well, let me ask you what would have happened if
11 you didn't pay the money back to Sam Riso?

12 A. Well, they didn't fool around. They have
13 enforcers who would subject you to bodily harm
14 of some sort.

15 Q. Is this what motivated you to pay the money back?

16 A. There was an agreement I would say. I would
17 have paid it back.

18 Q. But is this also what motivated you to pay it
19 back rather than to forget to pay it?

20 A. Well, it would, yes.

21 Q. Did you think you could wipe those debts out
22 by filing bankruptcy?

23 A. No.

- 1 Q. Did you ever claim financial bankruptcy to pay
2 off debts?
3 A. No.
4 Q. What did you think?
5 A. Down the river.
6 Q. Something would happen to you?
7 A. Yes.
8 Q. So this was a motivating factor in paying these
9 debts?
10 A. Yes, sir.
11 Q. Do you know Bernie Spaziano?
12 A. Yes.
13 Q. Where do you know him from?
14 A. North Tonawanda.
15 Q. Had you ever discussed borrowing money with him
16 or knowing that he borrowed money?
17 A. Yes, he borrowed money from Babe then.
18 Q. Babe Filitteri?
19 A. Right.
20 Q. When was that?
21 A. The last two years, all the time.
22 Q. And was he borrowing from somebody else?
23 A. Benny Nicholetti, in Niagara Falls.

1 Q. And was he borrowing from anybody else?

2 A. Not that I know of.

3 Q. Do you know what kind of loans they were?

4 A. They were all six for five.

5 Q. He'd make weekly payments?

6 A. He asked me a couple of times to make a payment.

7 Q. Did he ever tell you that he had been beat up
8 by anybody?

9 A. He got pushed around one time.

10 Q. Did he get worked over in North Tonawanda?

11 A. Yes.

12 Q. When was that?

13 A. I couldn't tell you, probably a year ago or
14 less.

15 Q. 1969?

16 A. Yes.

17 Q. Did he tell you he got worked over or pushed
18 around?

19 A. Yes. He was running a poker game and didn't
20 claim some money that he had.

21 Q. He didn't take payment?

22 A. That's right.

23 Q. Did he say who caused him to be beat up?

1 A. He didn't say who caused it but it was Sunny.

2 Q. You're talking about Benny Nicholetti Junior
3 who is also known as Sunny Nicholetti?

4 A. Yes

5 Q. Did he owe anybody else money for loans that
6 you know of?

7 A. That I couldn't tell you. He was - - he was
8 always borrowing money.

9 Q. Did you ever see Babe Bilitteri at Bernie
10 Spaziano's barbershop?

11 A. No.

12 Q. But Bernie said that he borrowed money at
13 six for five?

14 A. Yes. He did say six for five because that's
15 the rate.

16 Q. Did you borrow any money from anybody else
17 besides Rizo?

18 A. No, just Rizo and Bilitteri were the only ones.

19 Q. Did you ever borrow money from anybody else?

20 A. Maybe ten years ago, that was just a \$60 loan.

21 MR. SCHROEDER: Does anybody have any questions
22 of Mr. Tonaus?

23 (No response.)

(Witness excused.)



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UNITED STATES DEPARTMENT OF JUSTICE
ORGANIZED CRIME AND RACKETEERING SECTION
WASHINGTON, D.C. 20530

Buffalo Field Office
921 Genesee Building
Buffalo, New York 14202

DPO:am

July 1, 1975

Hon. John T. Curtin
United States District Court Judge
United States Courthouse - 6th Floor
Niagara Square
Buffalo, New York 14202

RE: Billiteri v. The Board of Parole et al.
Civ. 74-365 and Civ. 74-580

Dear Judge Curtin:

In the Board's Memorandum of May 19, 1975, at the bottom of page 21, the Government advised the Court that the electronic eavesdropping in this case had been properly authorized and, therefore, the Court should consider a transcript of such eavesdropping which had been offered in evidence by the Government in the course of the Parole Hearing.

The attached memorandum of Arthur D. Porcella indicates that the Department of Justice has been unable to locate a document necessary to the authentication of the propriety of the original authorization; wherefore the Government hereby withdraws the transcript of eavesdropping which it had earlier offered to the Court.

Very truly yours,

DENNIS P. O'KEEFE
Department of Justice Attorney

Att.

cc: Mr. John K. Adams
U.S. District Court Clerk

Philip B. Abramowitz, Esq.

Harold J. Boreanaz, Esq.



EX. 10

517

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : Robert C. Stewart
Attorney-in-Charge, Buffalo Strike Force
ATTENTION: Dennis O'Keefe

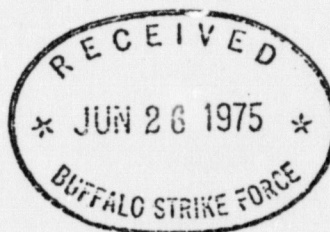
FROM : Arthur D. Porcella
(Attorney
Special Operations Unit

SUBJECT: Albert M. Billiteri v. United States Board of Parole, et al.,
Civil Nos. 74-365, 74-580

DATE: June 24, 1975
ADP:vda

This is in reply to your memoranda of May 21, and May 28, 1975, requesting an affidavit concerning three electronic interception authorizations relating to an investigation of Albert M. Billiteri.

When I informed Mr. O'Keefe recently that we had been unable to locate any information in this Unit relating to an authorization of June 9, 1969, he requested that we communicate that information to you in writing. Mr. O'Keefe also cancelled the request for an affidavit.



5010-110

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518

May 7 at 8. 75

2 3 4 5 6 7 8

Exhibit Number	For Ident.	In Evid	Description
1			Letter to J OH from H Browning 7-3-72
2			Letter to J OH from H Browning 5-12-72
3			Letter to H Browning from Dennis O'Heke & notice from town May 17, 72
4			Letter to H Browning from D O'Heke 1-7-71
5			Letter to H Browning from D O'Heke with order of dismissal 7-21-72
6			Letter to Probation Dept from Ed Tuttle 6-12-72
7			Letter Probation Dept from Jostrom 6-22-72
8			Letter from Clinton County to Probation Dept 6-16-72
9			Letter from Theo John Sordica to Probation Dept 6-5-72
10			Letter from Jos O'Heke to Probation 6-14-72
11			Letter to Probation Dept from Charles Brown 6-13-72
12			Letter to Probation Dept from Phil Maguire 6-6-72
13			Letter to Probation Dept from Wm D. Brown 6-15-72
14			Letter from Dr Harold W. Brown to Probation Dept 6-15-72

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EX-12

July 3, 1972

C
O
P
Y

Hon. John O. Henderson
United States District Court Judge
United States Court House
Buffalo, New York 14202

Re: United States of America -vs- Albert M. Billiteri
CR No. 1970-197

Dear Judge Henderson:

Enclosed please find the following materials which I respectfully request that you consider as part of the pre-sentence investigation regarding my client above captioned in connection with his pending sentence before you:

- A. Copies of income tax returns for the years 1968, 1969 and 1970
- B. Medical Report from Doctor Harold Yablin dated June 21, 1972
- C. Eight letters of recommendation

Very truly yours,

HAROLD J. BOREANAZ

HJB:mjs

Enclosures

Hand delivered this date



EX. 13

May 10, 1972

Hon. John O. Henderson
United States District Court Judge
Western District of New York
United States Court House
Buffalo, New York 14202

Re: United States v. Albert Billiteri
and Patty Naples

Dear Judge Henderson:

You will please recall that we discussed the above case some weeks ago. At that time, Mr. Rodenberg and I talked about a possible plea disposition.

You requested that I reduce our discussion to writing and suggested that I remind you that you would consider this letter as confidential.

I represent the first above named defendant and Mr. Rodenberg represents the only other defendant.

The indictment, insofar as it relates to my client, alleges in five counts, a conspiracy to engage in the extension of extortionate credit and four substantive counts alleging violations of the extortionate credit sections of Title 18.

The conspiracy is alleged to have existed from June 1, 1968 to July 15, 1969. The substantive counts allege specific dates from July 15, 1968 to June 28, 1969. The largest

Hon. John O. Henderson
May 10, 1972
Page 2

loan alleged in the substantive counts amounts to \$700.00 and the smallest is \$200.00.

The chief witness for the Government is one Bernard Spaziani who was indicted for perjury by the Federal Grand Jury that first heard his testimony regarding this very case. Thereafter, Mr. Spaziani appeared again before the Grand Jury and gave the testimony which resulted in this indictment. I understand that the perjury indictment is still pending against him.

In my judgment the case is one that could reasonably result in an acquittal.

My client proposes to plead to the first count of the indictment (conspiracy). The maximum sentence under this count would be five years. I understand that the Government recommends that the Court accept this plea and proposes to dismiss the substantive counts at the time of sentence.

My client was born in 1927 in Buffalo. His prior record of conviction is as follows: 1941 - juvenile - auto theft - probation; 1944 - Federal - Possession of a still - 18 month sentence imposed; 1950 - Federal - conspiracy to violate the Dire Act - 18 month sentence.

I believe that if you see fit to accept this proposed plea that the possible range of sentence available to you is such that interests of society can be served justly and fairly.

Very truly yours,

HAROLD J. BOREANAZ

HJB:nl

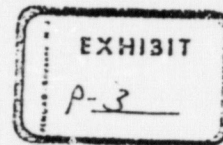


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WASHINGTON, D.C. 20530

Suite 921, Genesee Bldg.
1 West Genesee Street
Buffalo, New York 14202



DPO: am

May 17, 1972

Harold J. Boreanaz, Esq.
736 Brisbane Building
Buffalo, New York 14202

RE: United States v. Albert M. Billiteri
Cr. No. 1970-197

Dear Mr. Boreanaz:

Enclosed please find a copy of the Government's
Motion filed in this matter with the Court this date,
May 17, 1972.

Very truly yours,

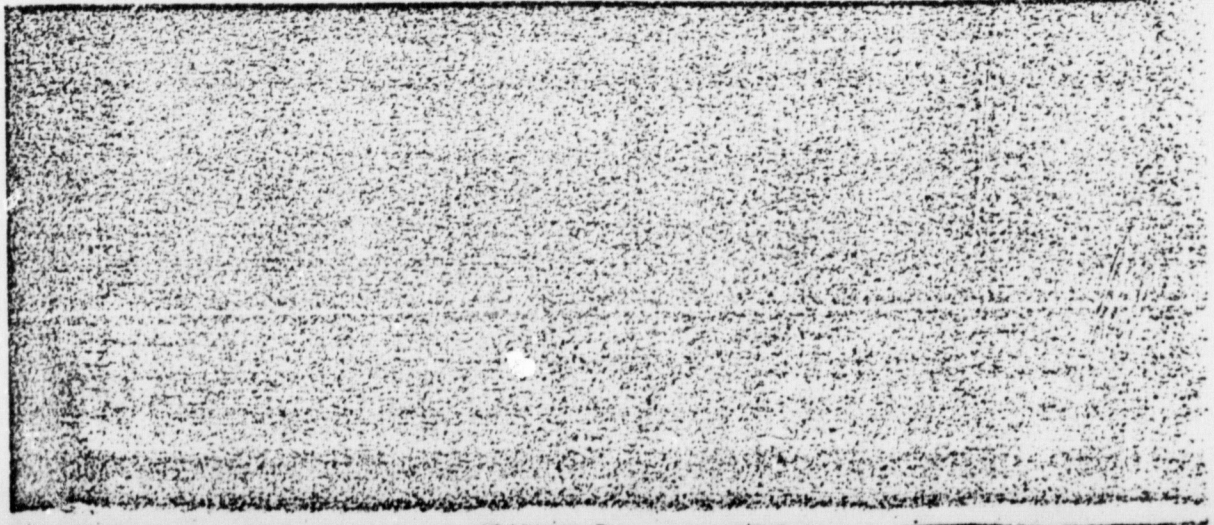
Dennis P. O'Keefe

DENNIS P. O'KEEFE
Department of Justice Attorney

Encl.

cc: Clerk of the Court

P.S. Give me a call re Steve Costello.



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-v-

ALBERT M. "Babe" BILLITERI
PASQUALE NAPOLI,
AKA: PATTY NAPLES

Defendant

CR. No. 1970-197

GOVERNMENT'S MOTION TO SET TRIAL DATE

The United States of America has for some time been negotiating, in good faith, with Harold J. Boreanaz, attorney for defendant ALBERT M. BILLITERI, and with Salten Rodenberg, attorney for defendant PASQUALE NAPOLI, relative to the disposition of this case.

While it appeared for a time that these negotiations would save the Government the expense of a trial and would also satisfy the defendants, these negotiations have now reached an impasse.

Wherefore, because there is no longer any common basis for further negotiations, because the United States of America is and has been ready to proceed to trial in this matter, and because the indictment in this case dates from 9 December 1970, the United States of America moves said case for trial and asks the Court to set it down for trial at the first convenient date of this Court's calendar.

Respectfully submitted,

C. DONALD O'CONNOR
Acting United States Attorney

By:

DENNIS P. O'KEEFE
Department of Justice Attorney

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UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530



EX. 15

Address Reply to the
Division Indicated
and Refer to Initials and Number

CR. 1970-197
DPO:am

Suite 921 - Genesee Bldg.
1 West Genesee Street
Buffalo, New York 14202
January 7, 1971

Harold J. Boreanaz, Esq.
736 Brisbane Building
Buffalo, New York

RE: United States v. Albert M. Billiteri, et al

Dear Mr. Boreanaz:

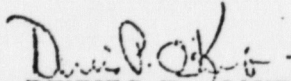
The Government is in possession of certain statements made by your client, Albert M. Billiteri. While, in accordance with local custom and practice we would ordinarily make these statements available to you, in this particular case we are unable to do so because of the federal statute involved. We suggest you move to obtain these statements in accordance with Sections 2518 (8)(b) and 2518 (10)(a) of Title 18, United States Code.

The Government is also in possession of certain records, etc., which we will make available for your inspection upon ten days notice.

Finally the Government is in possession of the original perjured testimony of one Bernard Spaziani which, under the authority of Brady v. State of Maryland, we will make available to you shortly before trial.

The Government has no other material available to you under Rule 16.

Yours truly,


DENNIS P. O'KEEFE
Acting Attorney in Charge
Buffalo Strike Force

cc: Hon. Judge John O. Henderson
Clerk of U.S. Court



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UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

SUITE 921 GENESEE BLDG.
BUFFALO, NEW YORK 14202



July 21, 1972

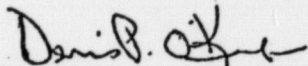
Harold J. Boreanaz, Esq.
736 Brisbane Bldg.
Buffalo, New York 14202

Re: United States v. Albert M. Billiteri
CR. No. 1970-197

Dear Mr. Boreanaz:

Enclosed please find two copies of the dismissal
of certain counts of the indictment relative to your
client, Albert M. Billiteri.

Very truly yours,


DENNIS P. O'KEEFE
Department of Justice Attorney

Encl.(2)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

ALBERT M. DILLITERI

Criminal No. 1970-197

ORDER FOR DISMISSAL

Pursuant to Rule 43(a) of the Federal Rules of Criminal Procedure and by leave of Court endorsed hereon, the Acting United States Attorney for the Western District of New York hereby dismisses Counts 2, 3, 4 and 5 of the indictment against ALBERT M. DILLITERI, defendant.

/s/ C. Donald O'Connor
Acting United States Attorney

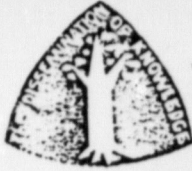
Leave of Court is granted for the filing of the foregoing dismissal.

/s/ John O. Henderson
United States District Judge

Date: July 5, 1972.



527



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EX. 17

June 12, 1972

Parole & Probation Department
U.S. Department of Correction
Western District, New York

Gentlemen:

I have been acquainted with the Billiteri family for the past 24 years. This has motivated me to write to you concerning Albert Billiteri.

Having watched the family grow, I had the occasion to observe Mary, Mrs. Billiteri, like so many other American mothers become sick to the point of emotional collapse with worry and concern when Frank was doing his part in Vietnam and Tom his stint in Korea. Jo Marie, now 13, will be entering high school in the Fall - beginning a most crucial time in her life. The boys are now married so there are new daughters-in-law as well as lovely grand-children.

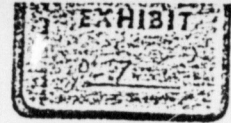
The family - mother, children, grand-children - the uninvolved, are usually the ones that are hurt the most by forced and sometimes lengthy separation. For this reason, I humbly suggest that any consideration that might be extended both in respect to time and distance away from this man's family would certainly have a marked, positive effect on these wonderful people.

Thanking you for this opportunity to express my feelings on this matter, I remain

Very sincerely yours,

Edward L. Tuttle
Edward L. Tuttle
President

ELT/sy



EX. 18

6650 Transit Rd.
Williamsville, N.Y. 14221

June 22, 1972

Probation Department
United States District Court
Western District of New York
68 Court Street
Buffalo, New York

To Whom It May Concern:

In writing this letter, I am trying to recommend you to give a great deal of consideration in the case of Mr. Albert Billiteri, who is to be incarcerated in the near future.

We have been close friends since we became acquainted dating back 16 or 17 years ago when we were working as cement masons.

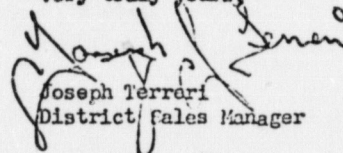
We have been friends socially and in a religious aspect also. I was sponsor to his son for Confirmation and my wife is Godmother to Mr. and Mrs. Billiteri's daughter, Jo Marie.

Mrs. Billiteri has been under a great deal of stress due to her nervous condition dating back to when their son, Frank, was in the Army in Viet Nam. Her nervous condition will be further aggravated and a great hardship will prevail if her husband is sent to a place where it would be very difficult for this closely knit family to go to visit him.

I plead for the good of his wife (daughter especially) who has had to transfer to other schools because of all the badgering from schoolmates when all her father's problems were publicized in the newspaper.

I recommend that any special consideration that can be given to Mr. Billiteri and his family would gratefully be appreciated by his family and his many friends.

Very truly yours,


Joseph Terreri
District Sales Manager

Jr

June 16, 1972



EX. 19

From: Clinton C. Couhig Sr.
232 South Shore Blvd.
Lackawanna, New York

To: Parole and Probation Department
U.S. District Court
Western District New York

To Whom It May Concern:

I am writing this letter because I am acquainted with Albert Billiteri and know some conditions in his family.

I know also that he has pleaded guilty to a charge in U.S. District Court and is shortly to be sentenced.

His son Frank served in Vietnam a while ago and Mrs. Billiteri became so upset and worried that she suffered a breakdown. As a result of her condition the service gave her son a hardship discharge.

Albert Billiteri has two other sons, also a daughter in grade school. They have suffered much because of what happened to their mother and now because of the circumstances connected with their dad, Albert Billiteri.

I respectfully request that the competent officials who prepare the various reports to aid the judge arrive at a just sentence, give some attention to the circumstances in this man's family in preparing their reports.

Respectfully,

Clinton C. Couhig Sr.
Capt. USMA (Ret.)

U. S. DISTRICT COURT
WESTERN DISTRICT NEW YORK

June 5, 1972



To Whom It May Concern:

I the undersigned am writing this letter on behalf of a Mr. Frank Billiteri, of 64 Inwood Avenue, Buffalo, New York 14209.

I have known this young man since he was 14 years old. I had the privilege of teaching him religion courses while he was attending Grover Cleveland High School for two years, and I also had the privilege of performing his marriage here at Coronation of B. V. M. Church.

I understand that Frank's father Mr. Albert Mario Billiteri will be sentenced soon in court.

This is the purpose of this letter. Since Frank's entry in the service, his mother came very close to a nervous breakdown and has effected her with a very bad case of nerves ever since.

His sister, Jo Marie was being harassed in school so much (due to her father's situation) that she had to be pulled out of that school and sent to another to complete her education; thus resulting in leaving her a very high-strung emotional young lady.

What I am asking for is this consideration on behalf of the wife, son and daughter of Mr. Albert Billiteri: if Mr. Billiteri is to be incarcerated upon his sentencing by the court; which is apparent that he will be, would it be at all possible to have him sent to a Federal Prison close to Buffalo.

I do feel that after meeting and knowing this family, that if Mr. Billiteri were to be sent to a Federal Prison of some great distance from home that it would result in a very bad state of emotional stress to the wife and children if they were not able to visit him as often as they could if he were to be closer to home.

On their behalf, therefore, I submit my request to you.

If you could do anything in your power to make this request possible I would appreciate it very highly.

I thank you for your consideration and cooperation in this matter,
I remain -

Sincerely yours,

Rev. John J. Sardina
Rev. John J. Sardina
Associate Pastor
Coronation of B. V. M. Church
9 Pooley Place
Buffalo, N. Y. 14213

JOSEPH J. RICOTTA, M. D.

689 FOREST AVENUE
PHONE: 883-5244

BUFFALO 22, NEW YORK



June 14, 1972

Probation Department
U.S. District Court
Western District of New York

Re: Mrs. Mary Billiteri

Gentlemen:

This is to certify that Mrs. Mary Billiteri has been under my care since June of 1961. Mrs. Billiteri and her family grew up in the same neighborhood as I did and the family has been known to me for most of my life.

I am aware of the many problems that have existed in this family. I have performed major gynecological surgery on two occasions, 11-14-61 and 9-14-65. In addition to that she has been under my care for an Anxiety State superimposed upon an early Menopausal Syndrome. There have been many crises in her married life associated with her husband's problems. She was extremely tense and depressed while her son was in Vietnam.

The 13 year old daughter of the family has also been greatly affected by the family problems.

In anticipation of the almost certain incarceration of her husband, Mrs. Billiteri has requested that I call these facts to your attention with the hope that her husband may be confined in a location close enough to permit frequent visits by her and her daughter.

From a medical point of view, any consideration that you can give her in this matter will be of great emotional and psychological value.

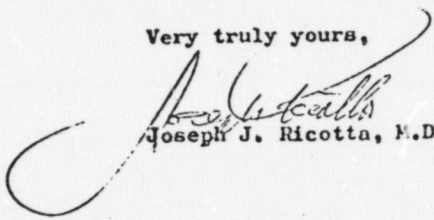
Probation Dept.

- 2 -

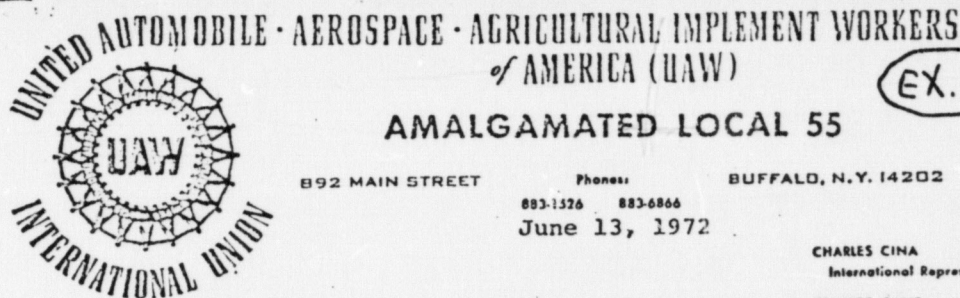
June 14, 1972

Thank you for your kind consideration in this matter.
I shall be happy to provide any additional information that you
may require.

Very truly yours,


Joseph J. Ricotta, M.D. —

jjr:fjm



892 MAIN STREET

Phone:

BUFFALO, N.Y. 14202

883-1526

883-6866

June 13, 1972

Parole & Probation Department
U. S. District Court
Western District, New York



CHARLES CINA
International Representative

CHARLES CANE
Business Representative

LEO HUNTER
Business Representative

DONALD WALDRON Jr.
Business Representative

TO WHOM IT MAY CONCERN:

I have known Albert M. Billiteri, and his wife Mary for many, many years. I occupied the front apartment at 126 Busti Ave., about 30 years ago and at that time, Albert and Mary occupied the rear apartment. Our relationship has been pleasant and cordial over the many years. Mary has been a good and devoted mother to her four children and to her husband. Albert has always been a good husband and a good father. However, due to the unfortunate situation, Albert finds himself in, his wife and children are going through an emotional, physical, and mental traumatic experience which is affecting not only their health, but their way of life in the community. Albert's daughter, Jo Marie has been going to St. Joseph's School, since she was a little girl up until the time her father's alleged involvement with certain unlawful activities were brought to trial. Since then, Jo Marie has been subjected to ridicule, harassment and other indignities from fellow students which has now forced this young girl to transfer to another school.

Albert will come up for sentencing on or about June 26, 1972. No doubt, the imprisonment of Albert Billiteri, if that is the judgment of the Court, will cause undue hardship on his family particularly, his wife and daughter. However, if Albert is to be confined to prison, it is urged that such place of confinement be one that is located near the City of Buffalo, wherein, his wife and daughter and other members of his family will be able to visit him regularly on visiting days without any hardship. Any extensive traveling for Mary, her daughter and other members of her family will add to their emotional, physical and mental strain which they are now suffering.

What ever consideration that can be given will be gratefully acknowledged, not only by Albert Billiteri, but also his family, as well as the many friends of the Billiteri family who are good up-standing citizens of the community.

Yours truly,

Charles Cina

Charles Cina

CC/f



230 Auburn Avenue
Buffalo, New York
June 6, 1972

To: Parole and Probation Dept., U. S. District Court,
Western District of N. Y.
Cc: Who ever it may concern:

It has been my pleasure to have known the family of Albert Billiteri since 1959. During these 13 years, I have witnessed the close family relationship and most recently saw a veil of pathos cover them. Mrs. Billiteri has suffered nervous and emotional stress which surpassed her partial nervous breakdown while concerned for her son, Frank, who served honorably in the Armed Forces of the U. S. in Viet Nam. During the past year, their daughter, Jo Marie, had to transfer to another school. She was an innocent victim of undesired harassment. Through all of this, both parents have kept the family together and persevered to keep their balance and love. To remove the Father from

the family is hard. But, if such a decision is decided upon, then, consideration of distance and time to keep contact with the father should enter the total picture. No additional hardships should be placed on this family.

I thank you for any favorable consideration you can levy in this particular situation.

Sincerely yours,
Richard E. Mazura
(Teacher, Bflo. Bd. of Ed.
for 20 years)

June 15, 1972



Parole and Probation Department
U.S. District Court
Western District New York

EX. 24

To Whom It May Concern:

Mr. Albert Billiteri is awaiting sentence on his plea of guilty to the commission of a crime in Federal Court.

I am writing this letter to recommend that the maximum possible leniency be granted Mr. Billiteri.

I have been acquainted with him, his wife and his family over the past twenty years. I am aware that he had difficulties with the law in his earlier life.

During the period I have known him, I have been impressed with his conduct as a husband and father. He is extremely close to his family and they to him. His oldest son is a Vietnam veteran and a credit to the community. His children are exemplary in their behavior and wouldn't be this way unless they were products of a good, solid upbringing. In my company and with my own wife and children, he has always been a perfect gentleman. I have never been ashamed to introduce him as my friend.

Mrs. Billiteri suffers from a serious nervous condition and I am afraid that her separation from her husband will have serious physical and emotional consequences.

In addition, the Billiteri's have a daughter who is now in the eighth grade in school. I am most apprehensive that her father's imprisonment and her mother's bad health will seriously jeopardize her well being.

For these reasons I address this plea to you for your assistance. If it is at all possible that the sentence given Albert Billiteri be probationary and not imprisonment, I fervently believe that Mr. Billiteri, his wife, his family and the entire community will benefit. I will sincerely appreciate your cooperation.

Yours very truly,

THE FRONT PAGE, INC.

William Delmont

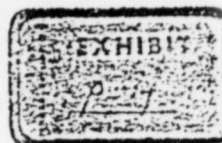
William Delmont
Publisher

WD:bm

DR. HAROLD YABLIN
171 JEWETT PARKWAY
BUFFALO, NEW YORK 14214

836-2472

INTERNAL MEDICINE



June 21, 1972

Re: Mr. Albert Billiteri

To whom it may concern:

This 45 year old male was admitted to Doctors Hospital because of hypertension, Diabetes Mellitus and lower abdominal pressure, which began 4-5 months ago. It is sometimes relieved by urination. He was treated for duodenitis in 1968 and in 1970 for chronic prostatitis. At that time his blood pressure was 170/110. There is no food intolerance at this time. He has dyspnea occasionally. There is no precordial pain. He had albuminuria six years ago. A left inguinal herniorrhaphy was done at age 15. A T&A was done at age 8. One brother died of coronary disease at age 39 and his father, a diabetic, died of coronary disease at age 67.

On physical examination, his chest was clear. His heart was regular in rate and rhythm, and there were no heart murmurs at the time of examination. The abdomen was pendulous with no tenderness. There was no pretibial edema. Rectal examination revealed hemorrhoids and prostatic enlargement.

Laboratory work was as follows: Urinalysis within normal limits. CBC revealed a leukocytosis probably secondary to prostatic infection. SMA12 profile within normal limits. A 2 hour post prandial blood glucose was 58% suggesting that the patient on a hospital diet is controlled. Serology non-reactive. X-ray of the chest revealed an 8mm. calcification in the right lung base having the appearance of a calcified granuloma. The lung fields are otherwise clear. I.V.P. revealed a normal timed intravenous pyelogram. The left kidney is slightly smaller than the right; it is probably within normal limits. Barium Enema impression normal colon. EKG is normal.

The diagnoses are as follows: Diabetes Mellitus, Essential Hypertension, Chronic Prostatitis with early benign prostatic hypertrophy.

Psychologically, he is well orientated at present. He meets people well and is well received by them. He is very kind and has a remarkably close respectful family relationship.

In view of his hypertension, diabetes and general health status, it is highly significant and important that the family ties remain as close as possible. It would be detrimental to his emotional and physical health not to have frequent contact with his family.

Very truly yours,

Dr. Harold Yablin

HY/clp